

DATE: October 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-10428

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's use of methamphetamine in August 2002 raises concerns under Guideline H, Drug Involvement. The drug involvement concern is mitigated based on recency. He has not used illegal drugs in over four years and has no intention to abuse illegal drugs in the future. His deliberate omission of said drug use on a 2004 security clearance application raise security concerns under Guideline E, Personal Conduct. He has not met his burden to mitigate the security concern under personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On May 4, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.⁽¹⁾ The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline H, Drug Involvement; and Guideline E, Personal Conduct.

In a sworn statement signed June 21, 2006, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on August 16, 2006. DOHA issued a notice of hearing on September 7, 2006, scheduling the hearing for October 2, 2006. The hearing was conducted as scheduled. The SOR was amended by striking Applicant's middle name which was incorrect. The government submitted three exhibits that were marked as Government Exhibits (Gov Ex) 1-3. The exhibits were admitted into the record without objection. Applicant testified on his own behalf and submitted three exhibits which were marked as Applicant Exhibits (AE) A-C and admitted into the record without objection. DOHA received the hearing transcript (Tr.) on October 11, 2006.

FINDINGS OF FACT

In his SOR response, Applicant admits to all of the allegations. Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 41-year-old telephone technician for a defense contractor who is applying for a security clearance. He has a high school diploma and some college. He worked for his current employer since 2004.⁽²⁾ He is involved in a spouse-like relationship. He has been with his companion for 11 years. They are raising her three grandchildren, ages 2, 5 and 6.⁽³⁾

In August 2002, Applicant visited his father who was ill. When he returned home from visiting his father, a friend gave him some methamphetamine and advised him this "will get you going." Applicant used methamphetamine on two occasions over a two week period during that same month. He stopped using methamphetamine because it caused a lot of problems with his family members. He almost lost his companion due to his drug use. While on methamphetamine, he would miss work. He did not care what happened while on the drug.⁽⁴⁾

In February 2004, Applicant accepted a position with his current employer. On March 23, 2004, he submitted a security clearance application (SF 86) in conjunction with this employment.⁽⁵⁾ Question 27 of the application reads:

Your Use of Illegal Drugs and Drug Activity - Illegal Use of Drugs. Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbituates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?⁽⁶⁾

He answered "No" to question 27. He did not list his 2002 methamphetamine use. On December 12, 2004, Applicant was interviewed by Special Investigator for the Office of Personnel Management (OPM) in conjunction with his background investigation. He provided a signed, sworn statement on that same date.⁽⁷⁾ The content of the statement dealt with financial issues and some foreign travel. The record is not clear as to whether the investigator asked questions pertaining to illegal drug use during the interview. The Applicant admits that he never brought up his August 2002 methamphetamine use during the interview.⁽⁸⁾

In approximately late summer, early fall 2005, Applicant was called as a witness in an employment hearing. His supervisor had recently been fired. During the employment hearing, he was asked whether he had used methamphetamine in 2002. He admitted using methamphetamine.⁽⁹⁾

On January 4, 2006, Applicant answered interrogatories pertaining to illegal drug use. He listed his 2002 methamphetamine use.⁽¹⁰⁾ In his answer to the SOR, Applicant admitted to putting the wrong answer on his March 30, 2004, security clearance application. He states he answered "No" because he did not think of the one time it took place.⁽¹¹⁾ At his security clearance hearing, he testified that when he answered question 27 on his security clearance application, he was thinking the question referred to a continuous drug user rather than someone who had just tried it.⁽¹²⁾

Applicant has no intention of using methamphetamine in the future. He states that he would hate to lose his job over his dumb stunt.⁽¹³⁾ He is highly regarded at work. The Chief Information anagement Division at the military installation where he works as a contractor, states he is an excellent employee. He has a good attendance record and no adverse actions. He willingly comes back in, if needed, late at night or non-duty days.⁽¹⁴⁾ His supervisor states he is honorable, forthright, conscientious and productive in both his work and personal life.⁽¹⁵⁾ A November 16, 2005, performance appraisal indicates his performance was effective over the past year but suggests he needs improvement in the area of knowledge of corporate policies.⁽¹⁶⁾

POLICIES

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information."⁽¹⁷⁾ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline H - Drug Involvement: Improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information. [\(18\)](#)

Guideline E - Personal Conduct: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. [\(19\)](#)

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to the adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." [\(20\)](#) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. [\(21\)](#) An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. [\(22\)](#)

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. [\(23\)](#) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. [\(24\)](#) An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. [\(25\)](#)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. [\(26\)](#) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance. **CONCLUSIONS**

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guidelines H, Drug Involvement; and E, Personal Conduct.

Guideline H - Drug Involvement

While not a habitual user, Applicant used illegal drugs (methamphetamine) on two occasions in August 2002. Under the drug involvement guideline, Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1: (*Any drug abuse*) applies as well as DI DC E2.A8.1.2.2: (*Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.*)

Security concerns based on possession and use of illegal drugs can be mitigated. Drug Involvement Mitigating Condition (DI MC) E2.A8.1.3.1: (*The drug involvement was not recent*) and DI MC E2.A8.1.3.3 (*A demonstrated intent not to abuse any drugs in the future*) apply in Applicant's case. It has been over four years since his last use of illegal drugs. His drug involvement is not recent. He has no intent to use illegal drugs in the future. Although he was 38 years old at the time of his illegal drug use, in other words, mature enough to know better, the pressures he experienced during

his father's illness may have clouded his judgment. The security concerns raised by Applicant's use of illegal drugs is mitigated.

Guideline E - Personal Conduct

Applicant's deliberate falsification of question 27 on his March 23, 2004, security clearance application supports the application of Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2: (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*). Although he states in his answer to the SOR that he forgot about the methamphetamine use, his prior use occurred less than two years prior to filling out his security clearance application. Applicant states he stopped using methamphetamine because his family was giving him a hard time about his use. He indicates that he and his companion of 11 years almost broke up because of his drug use. This incident was clearly a significant event in his life. I find it unlikely that he did not remember his methamphetamine use when filling out his security clearance application.

At hearing, Applicant provided a different explanation for not listing his methamphetamine use in response to question 27 on his security clearance application. He claimed that he thought he was only to answer "yes" to question 27 if he was a continuous drug user rather than a person who just tried an illegal drug. The language of question 27 is quite clear. A reasonable person would be able to understand that question 27 asks whether an applicant has used any illegal drugs within the past seven years. There is nothing in the plain language of question 27 which could mislead an applicant to understand the question was directed towards continuous drug users. Applicant is a high school graduate who has some college credit. Based on the reasonable person standard and Applicant's inconsistent explanations for omitting his methamphetamine use when he filled out his security clearance application, I find that his omission was deliberate.

Considering the Personal Conduct Mitigating Conditions (PC MC), only PC MC E2.A5.1.3.3: (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*) has the potential to apply to the facts of this case. I find that it does not apply. Applicant did not make a prompt, good-faith effort to correct his falsification. The security office had no information about his illegal drug use until after he admitted to methamphetamine use while testifying in an unrelated employment hearing in 2005. He had the opportunity to provide information about his methamphetamine use during a October 12, 2004, interview with a Special Investigator from OPM. He did not mention his illegal drug use during the interview. PC MC E2.A5.1.3.3 does not apply. I conclude the personal conduct security concern is not mitigated. I find against Applicant under Guideline E.

Whole Person Factors

The adjudicative process must include evaluation of the "whole person" factors discussed in the Directive. As mentioned in the policy section these include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. [\(27\)](#)

I have considered all the evidence and the "whole person" in evaluating Applicant's security worthiness. The nature of Applicant's conduct is serious. The government expects individuals to be truthful at all times when applying for and being entrusted with a security clearance. Applicant was 39 years old when he filled out his security clearance application. He was old enough and mature enough at the time he falsified his security clearance application to know he should have provided truthful information in response to question 27. While Applicant's superiors gave him favorable recommendations, I note that applicants with a good or even exemplary work history may engage in conduct that has negative security implications. Deliberately falsifying a security clearance application has negative security implications and raises questions about the Applicant's candor and trustworthiness. I am persuaded by the totality of the evidence that Applicant failed to mitigate the security concerns raised under Guideline E based on his deliberate omission of his methamphetamine use on his security clearance application. It is not clearly consistent with the national interest to grant

Applicant a security clearance. Eligibility is denied.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline H: FOR APPLICANT

Subparagraph 1.a: For Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Erin C. Hogan

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended.

2. Tr. at 5.

3. Tr. at 31.

4. Gov Ex 3; Tr. at 15, 20-22, 27-28.

5. Gov Ex 1.

6. *Id.* at question 27.

7. Gov Ex 2.

8. Tr. at 24-25.

9. Tr. at 25-26; 30-31.

10. Gov Ex 3.

11. Answer to SOR

12. Tr. at 16, 23.

13. Tr. at 33-34.

14. AE A.

15. AE B.

16. AE C.

17. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

18. Directive ¶ E2.A8.1.1.

19. Directive ¶ E2.A5.1.1.

20. Directive ¶ E2..2.1.

21. *Id.*

22. *Id.*

23. Directive ¶ E3.1.14.

24. Directive ¶ E3.1.15.

25. Directive ¶ E2.2.2.

26. Exec. Ord. 10865, § 7.

27. Directive ¶ E.2..2.1.