

DATE: September 25, 2006

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 05-16894

**DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I .Goldstein, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The recency and extent of applicant's intentional falsifications of material facts on a Security Clearance Application (SCA) requires a denial of his clearance request. Clearance is denied.

**STATEMENT OF THE CASE**

On May 12, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, (as administratively reissued on April 20, 1999), issued a Statement of Reasons (SOR) to applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on May 30, 2006. The case was assigned to me on July 28, 2006. A Notice of Hearing was issued on August 18, 2006, and the hearing was held on September 7, 2006. The transcript was received on September 15, 2006.

**FINDINGS OF FACT**

Applicant is a 49 year old employee of a defense contractor.

In June 2002, applicant was arrested and charged with Possession of Marijuana, Distribution or Selling of Marijuana, and Importation of Marijuana. In September 2002, he pleaded guilty to the first two charges (both felonies), and the third charge was dismissed. He was sentenced to five years in prison. He actually served just three months in jail; the other four years and nine months he spent on probation. He was also fined \$3,000.00.

Applicant intentionally provided false, material information to the Government in response to three questions on an

SCA he executed on November 9, 2004 (Exhibit 1). Specifically, in response to Question 21, he denied that he had ever been charged with a felony. In response to Question 24, he denied that he had ever been charged with or convicted of a drug-related crime. And, in response to Question 29, he denied that he had been involved in the illegal purchase, manufacture, trafficking, production, transfer, shipping, receiving, or sale of cannabis. Applicant intentionally lied because he wanted the "job of a lifetime" that required a clearance, and his words, "You have to do what you have to do sometimes, so I did, I admit, I did lie" (TR at 17).

### **CONCLUSIONS**

With respect to Guideline H, the evidence establishes that in 2002, applicant was arrested for, charged with, and convicted of two serious felonies involving the possession and distribution of marijuana. This conduct reflects adversely on his judgment and reliability, and requires application of Disqualifying Condition E2.A8.1.2.2 (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution*).

The foregoing arrest and conviction was the only incident of drug involvement alleged in the SOR. Because this incident occurred over four years ago, applicant qualifies for Mitigating Condition E2.A8.1.3.1 (*the drug involvement was not recent*). Based on the evidence presented, I conclude that applicant's involvement with illegal drugs ended on the day of his arrest. Given this fact, Guideline H is found for applicant.

With respect to Guideline E, applicant's intentional falsifications of material facts on the SAC are extremely troubling. The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts on a security clearance application, it is extremely difficult to conclude that he or she nevertheless possesses the good judgment, reliability and trustworthiness required of clearance holders. Applicant's intentional falsifications require application of Disqualifying Condition E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . .*). No Mitigating Conditions apply. Based on the foregoing, Guideline E is found against applicant.

With respect to Guideline J, as noted above, applicant was convicted of two serious drug-related felonies in 2002. This conduct requires application of Disqualifying Condition E2.A10.1.2.2 (*a single serious crime or multiple lesser offenses*). Had this been applicant's last criminal activity, the passage of time since it occurred may have been sufficient to mitigate it. However, because applicant's intentional falsifications of material facts on the SCA in November 2004 (less than two years ago) constitutes felonious conduct under 18 U.S.C. 1001, he does not qualify for Mitigating Condition E2.A10.1.3.1 (*the criminal behavior was not recent*). This subsequent criminal conduct also precludes application of Mitigating Condition E2.A10.1.3.2 (*the crime was an isolated incident*). Based on the foregoing, Guideline J is found against applicant.

### **FORMAL FINDINGS**

GUIDELINE H: FOR THE APPLICANT

GUIDELINE J: AGAINST THE APPLICANT

GUIDELINE E: AGAINST THE APPLICANT

### **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for applicant.

---

Joseph Testan

Administrative Judge