

DATE: October 24, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-06558

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Emilio Jaksetic, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The recency and extent of (1) applicant's drug and alcohol abuse, and (2) intentional falsifications of material facts on a Security Clearance Application (SCA) and during an interview with a DoD investigator, precludes a finding that it is now clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

STATEMENT OF THE CASE

On May 25, 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, 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 June 13, 2006, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case (FORM) on or about July 12, 2006. Applicant did not file a response to the FORM. The case was assigned to me on September 12, 2006.

FINDINGS OF FACT

Applicant is a 27 year old employee of a defense contractor.

Drug Abuse

Applicant used marijuana with varying frequency, at times daily, from 1996 to at least May 2005. In his response to the SOR, he admitted that a drug test he took on or about May 31, 2005 was positive for marijuana, but added, "Since that moment my life has changed. Drugs are not part of that but my family is."

Applicant admits SOR Allegations 1b through 1e without qualification. These allegations are therefore incorporated by reference as Findings of Fact.

Alcohol Abuse

In his response to the SOR, applicant admitted that he consumed alcohol, at times to excess and to the point of intoxication, from approximately October 2001 to at least August 2005. He then stated, "since then I received treatment of my own and am sober." Applicant also admitted SOR Allegations 2b through 2e without qualification. These allegations are therefore incorporated by reference as Findings of Fact.

Applicant continued to consume alcohol after receiving alcohol-related treatment in 2002. There is no evidence that he consumed alcohol since August 2005.

Falsification

Applicant intentionally provided false, material information to the Government in response to two questions on an SCA he executed on March 23, 2004 (Exhibit 4), and during an August 2005 interview with a DoD investigator. With respect to the SCA, in response to Question 24, he failed to disclose that he was charged in 1997 with a drug-related offense, and in response to Question 27, he deliberately downplayed the extent and duration of his marijuana use when he stated he used it three times between June 1996 and June 1998. With respect to his August 2005 interview, applicant admitted in his SOR response that he deliberately falsified material facts when he told the investigator he used marijuana approximately "1 to 3 times" after his 1997 drug-related arrest.

CONCLUSIONS

With respect to Guideline H, the evidence establishes that applicant (1) used marijuana with varying frequency, at times daily, from 1996 to at least May 2005, with some of the use occurring after he was granted a DoD security clearance, (2) was arrested for and charged with a marijuana-related crime in 1997, and (3) tested positive for marijuana when drug tested as part of the drug treatment he received in 2005. This conduct reflects adversely on his judgment and reliability, and requires application of Disqualifying Conditions E2.A.8.1.2.1 (*any drug abuse*) and E2.A8.1.2.2 (*illegal drug possession*).

In his response to the SOR, applicant seems to state he stopped using marijuana after the positive drug test in May 2005. Hopefully this is true. However, given applicant's long-term, regular use of marijuana, and his prior dishonesty when discussing it, his uncorroborated statement of reform cannot be considered credible evidence. No Mitigating Conditions are applicable, and Guideline H is found against applicant. ⁽¹⁾

With respect to Guideline G, the evidence establishes that applicant (1) consumed alcohol, at times to excess and to the point of intoxication, from approximately October 2001 to at least August 2005, and (2) was convicted of Driving While Intoxicated in 2001 and in 2005. This conduct reflects adversely on his judgment and reliability. It also requires application of Disqualifying Conditions E2.A7.1.2.1 (*alcohol-related incidents away from work, such as driving under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use*) and E2.A7.1.2.5 (*habitual or binge consumption of alcohol to the point of impaired judgment*).

In his response to the SOR, applicant seems to indicate he has been sober since August 2005. Again, hopefully this is true. However, for the same reasons his statement of reform regarding his drug use was not credible, his uncorroborated statement of reform concerning his alcohol consumption is not credible. No Mitigating Conditions are applicable, and Guideline G is found against applicant.

With respect to Guideline E, applicant's falsifications of material facts on the SCA, and during his interview with a DoD investigator, 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, or during a face-to-face interview with a DoD Investigator, 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 . . .) and Disqualifying Condition E2.A5.1.2.3 (*deliberately providing false or misleading information concerning relevant and material matters to an investigator . . .*). No Mitigating Conditions apply. Based on the foregoing, Guideline E is found against applicant.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST THE APPLICANT

PARAGRAPH 2: AGAINST THE APPLICANT

PARAGRAPH 3: 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

1. Because there is no evidence that applicant used marijuana during the past year, he is not disqualified from receiving a clearance under 10 U.S.C. 986.