

February 14, 1997

In RE

Applicant for Security Clearance

ISCR Case No. 96-0590

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

Appearances

FOR THE GOVERNMENT

Martin H. Mogul

Department Counsel

FOR THE APPLICANT

Pro Se

STATEMENT OF THE CASE

On August 23, 1996, 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) (copy appended) 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.

The applicant responded to the SOR in writing on September 17, 1996. The case was received by the undersigned on October 22, 1996, and a Notice of Hearing was issued on January 16, 1997. A hearing was held on January 31, 1997.

FINDINGS OF FACT

Applicant is a thirty-one year old married man. He has been employed by the same defense contractor since 1989. He has held a DoD Top Secret security clearance since 1990.

Criterion H

Applicant used marijuana with varying frequency, at times on a daily basis, from approximately 1983 through 1994. In 1995, he used it "maybe a dozen or so" times, and in 1996 he used it "about" twice (TR at 17). He last used it in February or March 1996. He purchased marijuana during the time was using it.

Applicant used methamphetamine with varying frequency, at times three times a week, during a six month period in 1984. He did not use it between 1984 and 1992. From 1992 to March 1994, he used it with varying frequency, at times weekly. Since March 1994, he used it two or three times. He testified that he used it "maybe" twice in 1995, and once in March 1996 (TR at 22-23). Applicant purchased methamphetamine in the 1980s.

During 1984 or 1985, applicant used LSD once, Quaaludes once, cocaine two times, and hashish "maybe three or four

times." He purchased the Quaaludes and hashish, and "may have" purchased the LSD (TR at 24, 26-27).

Applicant received outpatient counseling for marijuana, methamphetamine and alcohol abuse from March 4, 1994 to October 25, 1994. Applicant sought the counseling after coming to the realization that he "did have a problem and that (he) could not solve it by (himself)" (TR at 27). Applicant testified that he had "an addiction" (TR at 20, 55).

Although applicant does not intend to use illegal drugs in the future, he acknowledged the difficulty he faces in trying to remain clean and sober. In a signed, sworn statement that he gave to the Defense Investigative Service (DIS) on April 16, 1996 (G-2), he stated the following:

"I cannot state unequivocally that I will never use an illegal drug in the future. That would not be an honest statement to make at this time. As long as I consider myself to be a recovering illegal drug user, the danger exists that I can use illegal drugs again. I am considering to return to counseling to deal with my problem and I anticipate that it can be resolved. I am very concerned about having those relapses and I will try to stop them from happening again; perhaps counseling is the answer."

Criteria E and J

From the time he was hired by his current employer in 1989 through October 25, 1995, applicant intentionally provided false, material information about his involvement with illegal drugs and/or his use of alcoholic beverages to the DoD on at least six occasions. These falsifications are as follows:

1. On a Personnel Security Questionnaire (PSQ) that he executed on September 20, 1989, applicant (1) stated that his use of illegal drugs consisted of experimenting with marijuana a few times before December 1985, and (2) denied that he ever purchased an illegal drug.

2. In a signed, sworn statement that he gave to the DIS on May 15, 1990 (G-5), applicant stated the following:

"I experimented with marijuana approximately twice a week until approximately Sep 85. This took place in the evenings when I was with friends. I have not used any other illegal drugs or controlled substances and do not intend to use marijuana or other illegal drugs in the future."

3. On a PSQ that he executed on March 17, 1995, applicant denied that he had ever purchased or used an illegal drug. He also denied that his use of alcoholic beverages had ever resulted in counseling.

4. During an August 2, 1995 interview with a Special Agent of the DIS, applicant stated that his involvement with marijuana consisted of using it twice a week from the Spring or Summer of 1984 to September 1985.

5. During a September 21, 1995 interview with a Special Agent of the DIS, applicant stated that his use of marijuana and amphetamines ended in September 1994.

6. In a signed, sworn statement that he gave to the DIS on October 25, 1995 (G-2), applicant stated that he had last used marijuana and methamphetamine in about September 1994.

Applicant admits that he intentionally provided the false information on these six occasions. He initially lied to obtain a security clearance, and he continued to lie in order to retain his security clearance. He told the complete truth about his drug use to a DIS Special Agent during a pre-polygraph interview in early 1996.

Character References

Applicant's wife appeared at the hearing and testified that applicant has been more responsible since he received the counseling, and that he is a dependable and honest man.

Applicant's supervisor during the past five years appeared at the hearing and testified that applicant is a reliable and trustworthy employee who does an outstanding job. He further testified that he never observed applicant under the

influence of alcohol or drugs.

Letters from applicant's mother-in-law and second level supervisor were admitted in evidence. The mother-in-law states that applicant is a responsible and dependable individual whose "integrity is beyond approach" (Exhibit A). The supervisor states that applicant is a "conscientious and dedicated employee." He further states that he has "never observed him to be under the influence of any substance in the workplace" (Exhibit C).

POLICIES

Enclosure 2 of the Directive sets forth the Adjudication Policy (divided into Disqualifying Factors and Mitigating Factors) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

DRUG INVOLVEMENT

Disqualifying Factors:

1. Any drug abuse.
2. Illegal drug possession.

Mitigating Factors:

None.

PERSONAL CONDUCT

Disqualifying Factors:

2. The deliberate omission, concealment, or falsification of relevant and material facts from any PSQ.
3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator . . . in connection with a personal security or trustworthiness determination.
5. A pattern of dishonesty.

Mitigating Factors:

None.

CRIMINAL CONDUCT

Disqualifying Factors:

1. Any criminal conduct, regardless of whether the person was formally charged.
2. A single serious crime or multiple lesser offenses.

Mitigating Factors:

None.

CONCLUSIONS

In DOHA cases, the Government has the initial burden of producing evidence that reasonably suggests an applicant cannot be relied upon to safeguard classified information. If the Government meets its burden, it has established a prima

facie case. Once the Government establishes a prima facie case, the burden shifts to applicant to produce evidence in refutation, extenuation, mitigation or reformation sufficient to establish that, notwithstanding the Government's prima facie case, he or she can be relied upon to safeguard classified information. In view of the Directive's requirement that a security clearance be granted only upon a finding that to do so is clearly consistent with the national interest, the applicant has a heavy burden.

In this case, the Government established a prima facie case under Criterion H. The evidence establishes that applicant used marijuana with varying frequency, at times on a daily basis, from approximately 1983 to February or March 1996; methamphetamine with varying frequency, at times three times a week, during a six month period in 1984; methamphetamine on a less frequent basis from 1992 to March 1996; and numerous other illegal drugs, namely, LSD, Quaaludes and cocaine, in the 1980s. Applicant's abuse of these drugs reflects adversely on his judgment, reliability and trustworthiness, and reasonably suggests that he cannot be relied upon to safeguard classified information for at least two reasons:

First, individuals granted access to classified information are responsible for safeguarding it twenty-four hours per day, seven days per week, on and off the job. An applicant who abuses marijuana, methamphetamine, or any of the other illegal drugs that applicant has abused, cannot be relied upon to meet his or her security responsibilities because the risk of an unauthorized disclosure of classified information through neglect or inattention while "high" on them is too great.

Second, applicant used marijuana and methamphetamine for many years with full knowledge that each time he used these drugs he was breaking the law. This suggests that applicant may be unwilling to abide by security regulations if he finds them in conflict with his personal wishes or desires.

Applicant testified that he has not used an illegal drug since March 1996 and does not intend to use any illegal drug in the future. Although I found applicant's testimony to be sincere, given the recency and extent of his marijuana and methamphetamine abuse, the fact he used these drugs after he received the drug and alcohol counseling, and the fact that he is not currently involved in any type of substance abuse recovery program, I cannot conclude that applicant will not use illegal drugs in the future. For this reason, Criterion H is found against applicant.

With respect to Criteria E and J, the evidence establishes that applicant intentionally provided false, material information about his involvement with illegal drugs to the DoD on at least six different occasions. Applicant initially lied in order to obtain a security clearance; he continued to lie in order to retain the security clearance. This dishonest conduct constitutes criminal conduct under Title 18, United States Code, Section 1001.

Although applicant regrets lying to the Government, the fact remains that he repeatedly lied about his involvement with illegal drugs and/or his use of alcoholic beverages over a period of at least five years, and revealed the complete truth only when faced with a polygraph examination. Applicant's dishonest and criminal conduct reflects adversely on his judgment, reliability and trustworthiness, and strongly suggests that he cannot be relied upon to be truthful with the Government. Given the recency (less than one year ago) and extent (six separate falsifications) of his criminal and dishonest conduct, I cannot conclude at the present time that it is clearly consistent with the national interest to grant him access to classified information. For this reason, Criteria E and J are 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