

DATE: November 20, 1997

In Re:

Applicant for Security Clearance

ISCR Case No. 97-0383

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On May 29, 1997, 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 June 23, 1997, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case on or about July 18, 1997. The applicant filed a response to the Government's written case on August 10, 1997. The case was received by the undersigned Administrative Judge on September 23, 1997.

FINDINGS OF FACT

Applicant is thirty-one years of age. He was granted a security clearance in April 1996.

Applicant used crystal methamphetamine (cm) with varying frequency, at times daily, from approximately 1994 to at least March 1997. He purchased cm, at times spending as much as \$150.00 during a weekend, from 1995 to at least March 1997.

On September 4, 1996, applicant was admitted to an inpatient psychiatric unit suffering from "Drug induced psychosis secondary to cm use" (G-7). He was discharged on September 6, 1996 with the following diagnosis: (1) Stimulant dependency syndrome, and (2) Stimulant induced psychosis. At the time he was discharged, applicant was referred to an outpatient drug treatment program. Applicant had his initial assessment at the outpatient program on September 10, 1996, at which time he was advised to begin outpatient counseling. Despite this advice, applicant never attended a counseling session.

Applicant used and purchased cocaine with varying frequency from approximately July 1989 to at least late 1995. He also used marijuana with varying frequency from approximately 1983 to at least 1985.

Applicant intentionally provided false, material information to the Government in response to three separate questions on a security clearance application that he executed on April 15, 1997 when he denied that he (1) had ever been arrested or charged with a crime, (2) had ever used an illegal drug, and (3) had ever used an illegal drug while possessing a security clearance. He also intentionally provided false, material information about his drug use and drug treatment to the Government in a signed, sworn statement he gave to the Defense Investigative Service (DIS) on February 10, 1997.

In his August 10, 1997 response to the Government's written case, applicant stated in pertinent part:

"I know what my past consists of and I have to live with it everyday. My past I can't change but the future I can and have done it on my own. If you knew me you would see the changes I've made in my life, and it has been rising for the last six months to year."

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.
3. Failure to successfully complete a drug treatment program prescribed by a credentialed medical professional.

Mitigating Factors:

None.

PERSONAL CONDUCT

Disqualifying Factors:

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 . . . determine security clearance eligibility.
3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator . . . in connection with a personnel 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 cm with varying frequency, at times daily, from approximately 1994 to at least March 1997; cocaine with varying frequency from approximately July 1989 to at least late 1995; and marijuana with varying frequency from approximately 1983 to at least 1985. 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 uses cm, or any of the other illegal drugs that applicant has used, 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 these drugs for many years with full knowledge that each time he used them 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 failed to rebut the Government's prima facie case under Criterion H. Although he has indicated that he has made changes in his life, the recency and extent of his cm use, together with his failure to attend any type of drug treatment program, precludes a finding at the present time that his abuse of illegal drugs will not recur. 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 and/or criminal record to the DoD on at least two occasions. This dishonest and criminal conduct⁽²⁾ reflects adversely on applicant's judgment, reliability and trustworthiness, and strongly suggests that he cannot be relied upon to be truthful with the Government. Given the recency and extent of this conduct, and the lack of any independent information indicating that applicant is reliable and trustworthy, 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

1. In October 1996 he was charged with Harassing Phone Calls. In December 1996 he was found guilty and fined (G-5).
2. This conduct constitutes criminal conduct under Title 18, United States Code, Section 1001.