

DATE: March 11, 1998

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In Re:

Applicant for Security Clearance

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ISCR Case No. 97-0698

**DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Martin H. Mogul, Department Counsel

**FOR APPLICANT**

*Pro Se*

**STATEMENT OF THE CASE**

On October 21, 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.

Applicant responded to the SOR in writing on November 6, 1997. The case was received by the undersigned on January 5, 1998. A Notice of Hearing was issued on January 12, 1998, and the hearing was held on February 19, 1998.

**FINDINGS OF FACT**

Applicant is thirty-five years of age. He is employed as a carpenter by a defense contractor.

Applicant used methamphetamine (crank) with varying frequency from approximately 1985 to April 30, 1996. From approximately November 1995 to April 30, 1996, he used it daily. He also purchased methamphetamine, at times spending approximately \$200.00 per month on it.

In April 1996 applicant made the decision to stop using methamphetamine, and he has not used it since then. He testified credibly that he has attended at least one meeting per week of Narcotics Anonymous (NA) and Alcoholics Anonymous (AA) since April 1996. He does not intend to use methamphetamine or any other illegal drug in the future.

Applicant intentionally falsified material facts on a security clearance questionnaire (SCQ) that he executed on May 8, 1997 when he stated that his past use of methamphetamine consisted of using it twice from "3/96 to 4/96." Applicant testified credibly that after he submitted the SCQ to his employer, he tried to get it returned to him so he could correct the information about his methamphetamine use. He further testified credibly that although he could not get the SCQ returned to him, he was told he could correct the information on the SCQ at the time he was interviewed by the Defense Security Service (DSS). In fact, when applicant was interviewed by a DSS agent in July 1997, he disclosed the full extent of his illegal drug use.

Letters from various individuals acquainted with applicant, including two members of the local law enforcement community, were offered into evidence. These letters establish that applicant is considered to be a reliable and dependable employee (Exhibits C and E), as well as an honest, trustworthy member of the community (Exhibits A, B and D).

## **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:

3. A demonstrated intent not to abuse any drugs in the future..

### **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 conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Mitigating Factors:

3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts.

### **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 methamphetamine with varying frequency, at times daily, from approximately 1985 to April 30, 1996. Applicant's abuse of this drug 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 methamphetamine 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 it is too great. Second, applicant used methamphetamine for many years with full knowledge that each time he used it 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 his testimony that he has not used methamphetamine since April 1996 was credible and worthy of belief, the recency and extent of his methamphetamine use, together with his failure to attend any type of formal drug treatment program, precludes a finding at the present time that his abuse of methamphetamine is unlikely to 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 to the Government about his use of methamphetamine. This dishonest and criminal conduct<sup>(1)</sup> reflects adversely on applicant's judgment, reliability and trustworthiness, and reasonably suggests that he cannot be relied upon to safeguard classified information.

Although applicant knowingly and willfully provided the false information about his drug use, the evidence establishes that he immediately regretted his mistake, and made attempts to retrieve the SCQ in order to provide the correct information. The evidence further establishes that although he could not get the SCQ returned to him, he did the next best thing, to wit: he told the complete truth about his drug use when he was interviewed by the DSS agent in July 1997. Although this does not excuse applicant's knowing and wilful falsification, it does constitute a significant mitigating factor which, when considered along with the very favorable letters admitted into evidence concerning his reliability and trustworthiness, leads me to conclude that applicant is essentially an honest and trustworthy individual who made a one time mistake in judgment that is unlikely to be repeated. For this reason, Criteria E and J are found for applicant.

## **FORMAL FINDINGS**

PARAGRAPH 1: AGAINST THE APPLICANT

PARAGRAPH 2: FOR THE APPLICANT

PARAGRAPH 3: FOR 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.

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Joseph Testan

Administrative Judge

1. This conduct constitutes criminal conduct under Title 18, United States Code, Section 1001.