

DATE: March 23, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0726

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On October 28, 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 17, 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 February 6, 1998. Applicant filed a response to the Government's written case on March 10, 1998. The case was received by the undersigned Administrative Judge on March 17, 1998.

FINDINGS OF FACT

Applicant is a forty-one year old employee of a defense contractor. He received a DoD security clearance in October 1995.

In May 1997, applicant tested positive for methamphetamine use on a company administered drug test. Applicant told his employer that the results of the drug test had to be wrong because he had never used illegal drugs, and asked that the sample he provided be tested by a different laboratory. As a result of applicant's request, the sample was tested by a different laboratory, and it too came back positive for methamphetamine use.

Applicant was given the choice of entering an eighteen month drug treatment program or being terminated. He chose the drug treatment program and entered it in June or July 1997. In his March 10, 1988 response to the Government's written case, applicant stated that he has "satisfactory (sic) completed" the drug treatment program. He did not, however, explain how he completed an eighteen month program in less than a year.

Applicant tested negative for drug use in July, August and September 1997.

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

Mitigating Factors:

None.

CONCLUSIONS

Applicant has consistently denied using methamphetamine in May 1997, or at any other time. If the sample applicant provided had not tested positive for methamphetamine at two different laboratories, he would be in a much better position to argue that the test results were wrong. However, because it is highly unlikely that two laboratories would make the same mistake, I must conclude that the test results were valid and that applicant must have used methamphetamine on at least one occasion in or around May 1997. This illegal drug use, particularly after he received a DOD security clearance, reflects adversely on applicant's judgment, reliability and trustworthiness, and strongly suggests that he cannot be relied upon to safeguard classified information.

Because applicant continues to maintain that he has never used methamphetamine or any other illegal drug, notwithstanding the aforementioned test results, there is no basis upon which to conclude he has reformed and will not use methamphetamine in the future. For this reason, Criterion H is found against applicant.

FORMAL FINDINGS

PARAGRAPH 1: 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