

KEYWORD: Personal Conduct; Criminal Conduct

DIGEST: Applicant's 2005 alcohol-related arrest was the result of an isolated incident of poor judgment that is unlikely to recur. Clearance is granted.

CASENO: 06-07230.h1

DATE: 06/25/2007

DATE: June 25, 2007

In Re:)	
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)	
-----)	ISCR Case No. 06-07230
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
JOSEPH TESTAN**

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Department Counsel

FOR APPLICANT

Virginia Gomez, Attorney at Law

SYNOPSIS

____ Applicant's 2005 alcohol-related arrest was the result of an isolated incident of poor judgment that is unlikely to recur. Clearance is granted.

STATEMENT OF THE CASE

On February 9, 2007, 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 March 30, 2007. The case was assigned to the undersigned on May 1, 2007. A Notice of Hearing was issued on May 29, 2007, and the hearing was held on June 12, 2007. The transcript was received on June 21, 2007.

FINDINGS OF FACT

Applicant is 26 years of age. He has been a full-time employee of a defense contractor since June 2004.

Applicant began drinking alcohol in Junior or Senior High School. He continued to consume it through college and after he obtained his current employment. Other than the incident discussed below, there is no credible evidence that he abuses alcohol.

In November 2005, applicant was arrested and charged with (1) Driving Under the Influence of Alcohol or Drugs and (2) Driving While Having a 0.08% or Higher Blood Alcohol Level. In August 2006, he pleaded no contest to the second charge and the first charge was dismissed. He was placed on probation for three years, ordered to pay approximately \$1,697.00 in costs and fines, and ordered to complete a first offense alcohol program. Applicant paid the \$1,697.00, and completed the alcohol program (Exhibit A). He is still on probation.

Applicant testified that on the night he was arrested he didn't appreciate the extent of his intoxication. He further testified that since he now realizes he can't accurately estimate if he has consumed too much alcohol to drive, he will no longer drive after consuming any alcohol. He further testified that he is committed to this course of action irrespective of his probationary status (TR at 21, 26-27, 36-37). Applicant's testimony was credible and worthy of belief.

Declarations from three of applicant's coworkers, including his immediate supervisor, were admitted into evidence. All three individuals state that applicant is reliable and trustworthy, and has shown no signs of having an alcohol problem.

CONCLUSIONS

Applicant's alcohol-related arrest and conviction reflect adversely on his judgment, and raise

concerns under both Guideline E¹ and Guideline J.² Disqualifying Conditions 31(a) (*a single serious crime or multiple lesser offenses*) and 31(d) (*individual is currently on parole or probation*) are applicable.

Applicant clearly learned a valuable lesson from this incident; namely, he cannot accurately assess his level of impairment after consuming alcohol. As a result, he made the decision not to drive after consuming any alcohol. This decision, the lack of any evidence indicating he may be unable to follow through with it (e.g., diagnosis of alcohol dependence), and the very favorable character references admitted into evidence, lead me to conclude that this was an isolated incident of criminal conduct that is unlikely to recur. Mitigating Conditions 32(a) (*so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*) and 32(d) (*there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement*) are applicable.

Based on the foregoing, and after consideration of the general factors set forth in Enclosure 2, Paragraph 2 of the Directive,³ Guidelines E and J are found for applicant.

FORMAL FINDINGS

PARAGRAPH 1: FOR THE APPLICANT
PARAGRAPH 2: FOR THE APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for applicant.

Joseph Testan
Administrative Judge

¹Guideline E: Personal Conduct. 15. *The Concern*. Conduct involving questionable judgment . . . can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.

²Guideline J: Criminal Conduct. 30. *The Concern*. Criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

³Pages 18 and 19.