

DATE: June 13, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-01622

**DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Martin H. Mogul, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The recency and extent of applicant's criminal conduct, including a violation of 18 U.S.C. 1001, precludes a finding that he currently possesses the good judgment required of individuals with access to our nation's secrets. Clearance is denied.

**STATEMENT OF THE CASE**

On February 12, 2002, 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 4, 2002. The case was assigned to the undersigned on April 11, 2002. Notices of Hearing were issued on April 15 and May 1, 2002, and the hearing was held on May 15, 2002. The transcript was received on May 23, 2002.

**FINDINGS OF FACT**

Applicant is a sixty-five year old security officer for a defense contractor.

In March 1997, applicant was arrested and charged with Driving Under the Influence of Alcohol (DUI). He was found guilty of the charge, fined \$500.00, sentenced to ten days in jail, and his license was suspended for 180 days. A warrant for applicant's arrest was issued, and is still outstanding, because he has not yet paid the fine.

In August 1992, applicant was working in a bar that he owned when he had to forcefully remove a customer from the bar. When he went to the police station to discuss the incident, he was informed by the police that the customer had filed a charge of Battery against him. The charge was eventually dismissed.

In March 1989, applicant and his wife had a domestic dispute that turned violent. The police were called to their residence, but neither was arrested.

In January 1984, applicant was arrested and charged with DUI. He was found guilty of the charge, fined \$417.00, sentenced to two days in jail, and placed on probation for three years.

In 1981, applicant was arrested and charged with DUI. He was acquitted of the charge.

In November 1978, applicant was arrested and charged with DUI. He was found guilty of the charge, fined \$405.00, sentenced to one day in jail, and was placed on probation for two years.

In August 1978, applicant was arrested and charged with DUI. He was found guilty of the charge and was fined \$305.00.

In 1975, applicant was arrested and charged with DUI. He was found guilty of a moving traffic violation, and fined \$305.00.

Despite the foregoing history of alcohol-related incidents, applicant does not believe he is an alcoholic (TR at 34). He attributes his alcohol-related problems to the fact that he spent much of his time working in bars (TR at 30-31).

Applicant claims that he has not consumed alcohol since 1997 (TR at 33), and in a statement he gave to the Defense Security Service (DSS) in May 2000 (Exhibit 2), he stated "in the future I don't intend to drink."

Applicant completed and executed a security clearance application (SCA) in July 1999. (Exhibit 1). In response to Question 24 which asked, "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?" applicant stated "yes," and then disclosed his 1997 conviction for DUI. The Government alleges that applicant's response was false because he failed to disclose that he had also been charged with and/or convicted of alcohol-related offenses in 1984, 1981, twice in 1978, and in 1975. When asked to explain his response to Question 24, applicant testified that he believed he was required to disclose only those incidents that occurred during the previous five years (TR at 35). He then testified that he thought he was only required to go back seven years (TR at 36-37). Considering the evidence as a whole, including the very plain language of the question and applicant's inconsistent testimony, I find that applicant intentionally falsified his response to Question 24. [\(1\)](#)

The only evidence offered by the Government to support the allegation that applicant is indebted to a state taxing authority in the amount of \$981.00, and that he has had a state tax lien filed against him, is a credit report (Exhibit 5). This credit report, standing alone, does not constitute credible evidence that applicant is indebted to that state taxing authority. Accordingly, Guideline F is found for applicant.

## **POLICIES**

Enclosure 2 of the Directive sets forth Guidelines (divided into conditions that could raise security concerns and conditions that could mitigate security concerns) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Guidelines are applicable:

### **Alcohol Consumption**

#### Disqualifying Conditions:

1. Alcohol-related incidents.

#### Mitigating Conditions:

2. The problem occurred a number of years ago and there is no indication of a recent problem.
3. Positive changes in behavior supportive of sobriety.

**Personal Conduct**

Disqualifying Conditions

- 2. The deliberate omission of relevant and material facts from any personnel security questionnaire.

Mitigating Conditions

None.

**Criminal Conduct**

Disqualifying Conditions

- 1. Any criminal conduct.
- 2. A single serious crime or multiple lesser offenses.

Mitigating Conditions

None.

**CONCLUSIONS**

The evidence establishes that applicant was arrested for and convicted of DUI four times since 1978, the last time in 1997. The evidence further establishes that applicant intentionally falsified material facts on the SCA that he executed in July 1999 when he failed to disclose all of his alcohol-related charges and convictions in response to Question 24. This conduct reflects adversely on applicant's judgment, reliability and trustworthiness, and strongly suggests that he cannot be relied upon to safeguard classified information.

With respect to Guideline G, applicant has not consumed alcohol since 1997, and he does not intend to consume it in the future. In view of these facts, I conclude that applicant's past consumption of alcohol does not constitute a current security concern. For this reason, Guideline G is found for applicant.

With respect to Guideline E, applicant's falsification of material facts on the SCA is extremely troubling. The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts on a security clearance application, it is extremely difficult to conclude that he or she nevertheless possesses the judgment, reliability and trustworthiness required of clearance holders. In this case, applicant offered no independent evidence that would mitigate the effect of his intentional falsification. For this reason, Guideline E is found against applicant.

With respect to Guideline J, the recency and extent of applicant's criminal conduct (four DUI convictions and a violation of 18 U.S.C.1001, a felony) precludes a finding that it is now clearly consistent with the national interest to grant him a security clearance.

**FORMAL FINDINGS**

PARAGRAPH 1 (Criminal Conduct): AGAINST THE APPLICANT

PARAGRAPH 2 (Alcohol Consumption): FOR THE APPLICANT

PARAGRAPH 3 (Personal Conduct): AGAINST THE APPLICANT

PARAGRAPH 4 (Financial Considerations): 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 a felony under 18 U.S.C. 1001.