

DATE: March 28, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-03251

**DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant no longer drinks and drives, and he has made a good faith effort to resolve his past-due financial obligations. Clearance is granted.

**STATEMENT OF THE CASE**

On August 8, 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, (as administratively reissued on April 20, 1999), 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 August 19, 2002. The case was assigned to the undersigned, and a Notice of Hearing was issued, on December 9, 2002. The hearing was held on January 28, 2003. The transcript was received on February 5, 2003.

**FINDINGS OF FACT**

Applicant is a 37 year old laborer. He is currently a resident of State A.

**Alcohol And Criminal Conduct**

In March 1993, applicant was arrested and charged with Driving Under the Influence (DUI) in State B. He pleaded no contest to the DUI charge and was fined \$1,463.00, ordered to spend 48 hours in jail, and ordered to attend an alcohol education class. Applicant left State B without resolving the matter, and eventually a warrant for his arrest was issued (Exhibit 5). On January 24, 2003, applicant returned to State B and surrendered to the authorities. He appeared before a

judge who did not order any additional punishment. Instead, applicant was ordered to immediately pay the original fine of \$1,463.00 and serve one day in jail, and was given permission to attend an alcohol education class at a later time in State A. Applicant paid the fine and served the one day in jail, and he intends to complete the alcohol class in State A and send proof of his completion to State B. When he does so, he will have completed all of his obligations to State B (Exhibit A; TR at 33-37). Applicant attributes his unwillingness to resolve this matter for so long to "silliness and being a fool and stubborn" (TR at 63-64).

In March 2000, applicant was arrested and charged with DUI. In May 2001, he was found guilty of an amended charge of Reckless Driving. He was fined \$490.00, and ordered to attend a DUI school and a Victim Impact Panel presentation. [\(1\)](#) Applicant paid the fine and attended the DUI school and Victim Impact Panel presentation, and his case was closed on November 15, 2001 (Exhibit 7).

Applicant testified that as a result of his attendance at the DUI school and Victim Impact Panel presentation, he is now "aware of the repercussions that (driving under the influence) might cause," and therefore, does "not drink and drive." If he drinks, he does so at home. (TR at 38; 63-64).

There is no evidence that applicant has ever been diagnosed as alcohol dependent, or that his alcohol-related misconduct has extended beyond drinking and driving. In addition, applicant's criminal conduct has been limited to drinking and driving.

### **Financial**

**SOR Allegation 3a:** Applicant was indebted to this creditor, but satisfied the debt in 1991 (TR at 40-41; Exhibit B).

**SOR Allegation 3b:** Applicant was indebted to this creditor in the amount of \$193.00, not \$1,500.00 as alleged in the SOR. The debt was satisfied in 2000 (TR at 41-43; Exhibit C).

**SOR Allegation 3c:** Applicant satisfied this \$161.20 debt in 2002 (TR at 43; Exhibit D).

**SOR Allegation 3d:** Applicant satisfied this debt in January 2003 (TR at 43; Exhibit E).

**SOR Allegation 3e:** The exact amount of the debt cannot be determined from the record; however, it most likely stands at around \$7,000.00, as opposed to the \$15,868.00 alleged in the SOR. The debt arose from the repossession of applicant's car. Applicant recently reached an agreement with the creditor to pay off the debt by making monthly payments of \$150.00. To show his good faith, applicant sent the creditor a \$500.00 payment. Applicant testified credibly that he will follow through with the payment plan (TR at 44-46; Exhibit F).

**SOR Allegation 3f:** Applicant satisfied this \$66.00 debt in 2000 (Exhibit G).

**SOR Allegation 3g:** Applicant compromised and settled this debt for \$91.10 in 2000 (TR at 47-49; Exhibit H).

Prior to finding steady employment with his current employer's predecessor in 1999, applicant worked temporary laborer jobs that he obtained with the help of his local union hall. Although applicant takes responsibility for his past financial irresponsibility, the unpredictable nature of this prior work pattern (i.e., temporary jobs - unemployment-temporary jobs), which to a certain extent was beyond applicant's control, played a significant part in his financial difficulties. One lesson applicant learned from the financial difficulties he previously faced is to avoid overuse of credit cards, as evidenced by the fact he currently has no credit cards (TR at 58).

Applicant has been a volunteer at a local VA hospital since February 2000. A letter from the Chief of Voluntary Services (Exhibit J) establishes that applicant performed over 2000 hours of volunteer work in a dedicated and professional manner.

### **POLICIES**

Enclosure 2 of the Directive sets forth Guidelines (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:

### **Alcohol Consumption**

#### Disqualifying Conditions:

1. E2.A7.1.2.1: Alcohol-related incidents away from work

#### Mitigating Conditions:

1. E2.A7.1.3.1: The alcohol related incidents do not indicate a pattern.
2. E2.A7.1.3.2: The problem occurred a number of years ago and there is no indication of a recent problem.

### **Criminal Conduct**

#### Disqualifying Conditions

1. E2.A10.1.2.2: A single serious crime or multiple lesser offenses.

#### Mitigating Conditions

1. E2.A10.1.3.1: The criminal behavior was not recent.
2. E2.A10.1.3.6: There is clear evidence of successful rehabilitation.

### **Financial Considerations**

#### Disqualifying Factors

1. E2.A6.1.2.1: A history of not meeting financial obligations.
2. E2.A6.1.2.3: Inability or unwillingness to satisfy debts.

#### Mitigating Factors

1. E2.A6.1.3.6: The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

### **CONCLUSIONS**

The evidence establishes that applicant was arrested, charged and convicted of two alcohol-related driving offenses, and that he has a history of not meeting his financial obligations in a timely manner. These facts reflect adversely on his judgment, reliability and trustworthiness, and reasonably suggest he cannot be relied upon to safeguard classified information.

With respect to his alcohol-related criminal conduct, following his last alcohol-related arrest in March 2000, applicant was ordered to attend a DUI school and a Victim Impact Panel presentation. Applicant testified credibly that his attendance at both forums brought home to him the seriousness and danger of driving under the influence of alcohol, and that as a result, he no longer drives after consuming alcohol. Given this credible testimony, the passage of time since applicant's last alcohol-related incident (almost three years), and the lack of any evidence that suggests applicant might not be able to follow through with his stated intention not to drink and drive (e.g., a diagnosis of alcohol dependence), I conclude that applicant is unlikely to drink and drive in the future. Given this fact, I further conclude that applicant's alcohol abuse and criminal conduct, which has consisted solely of drinking and driving, is unlikely to recur. Accordingly, Guidelines G and J are found for applicant.

With respect to applicant's debts, it should be noted at the outset that the SOR allegations are for the most part incorrect in two important ways. First, although all seven debts are alleged to have been unpaid as of January 22, 2002, at least four of them were in fact satisfied prior to that date. Second, the total amount of indebtedness to the seven creditors alleged in the SOR is approximately \$22,000.00. In fact, applicant's total indebtedness to the seven creditors was approximately \$11,815.00.

The evidence establishes that applicant has satisfied all of the debts alleged in the SOR, except for the \$7,000.00 debt arising from the repossession of his car. Although applicant procrastinated in dealing with this creditor, they eventually reached an agreement whereby applicant will make monthly payments of \$150.00 until the debt is satisfied. Applicant's testimony that he will follow through with the agreement until the debt is satisfied was credible and worthy of belief.

Although applicant's past financial irresponsibility is not condoned, I conclude that applicant (1) initiated a good faith effort to repay his creditors, (2) satisfied all but one of his past-due debts, (3) made payment arrangements with his remaining creditor to satisfy the debt, (4) learned from his past financial irresponsibility and is committed to avoiding a recurrence, and (5) is now financially stable and likely to remain that way. In view of these facts, Guideline F is found for applicant.

### **FORMAL FINDINGS**

PARAGRAPH 1: FOR 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 clearly consistent with the national interest to grant or continue a security clearance for applicant.

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Joseph Testan

Administrative Judge

1. Applicant testified that the Victim Impact Panel presentation consisted of listening to four people describe how they lost loved ones in a DUI incident (TR at 62).