

DATE: March 7, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-21080

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jonathan A. Beyer, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's criminal conduct would have been mitigated if not for 10 U.S.C 986. Clearance is denied, but waiver recommended.

STATEMENT OF THE CASE

On July 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 July 24, 2002, 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 August 13, 2002. Applicant did not file a response to the Government's written case. The case was assigned to me on October 16, 2002.

FINDINGS OF FACT

Applicant is 29 years of age. He is employed as a purchasing agent by a defense contractor.

On a winter evening in 1994, applicant was driving home after spending a night at a bar with friends. Applicant, who was intoxicated, lost control of the car and hit a tree, killing his passenger. As a result of his injuries, applicant spent about six weeks in the hospital. Applicant ended up losing the use of one of his hands.

As a result of the accident, applicant was charged with Involuntary Manslaughter. In October 1995, he was sentenced to five years in prison, all but 90 days suspended, and placed on probation for five years. He was also ordered to perform 320 hours of community service and to attend therapy with the alcohol/drug department. Applicant performed the

community service and completed the alcohol/drug therapy.

Applicant admits "to having poor judgment," and takes "full responsibility for (his) actions." He believes that he has paid his debt to society for this isolated incident of poor judgment that occurred when he was 21 years old. Since the accident he has earned his B.S. degree.

Applicant rarely consumes alcohol, but when he does, he never drives a vehicle.

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:

Criminal Conduct

Disqualifying Conditions

1. E2.A10.1.2.1: Criminal conduct.
2. E2.A10.1.2.2: A single serious crime or multiple lessor offenses.

Mitigating Conditions

1. E2.A10.1.3.1: The criminal behavior was not recent.
2. E2.A10.1.3.2: The crime was an isolated incident.
3. E2.A10.1.3.4: The factors leading to the violation are not likely to recur.
4. E2.A10.1.3.6: There is clear evidence of successful rehabilitation.

In addition to the formal Guidelines discussed above, Enclosure 2 of the Directive provides that each decision should take into consideration the following factors:

The nature, extent and seriousness of the conduct;

The circumstances surrounding the conduct, to include knowledgeable participation;

The frequency and recency of the conduct;

The individual's age and maturity at the time of the conduct;

The voluntariness of participation;

The presence or absence of rehabilitation and other pertinent behavioral changes;

The motivation for the conduct;

The potential for pressure, coercion, exploitation, or duress; and

The likelihood of continuation or recurrence.

CONCLUSIONS

The evidence establishes that during one evening in 1994, applicant exercised extremely poor judgment. Unfortunately,

that single lapse of judgment had extremely tragic consequences. Not only did applicant's friend die as a result of applicant's irresponsible conduct, a fact that applicant has to live with every day for the rest of his life, but applicant lost the use of a hand.

Despite the enormity of the tragedy, the fact remains that applicant's irresponsible conduct was an isolated incident that occurred over seven years ago. He fully understands that he alone was responsible for the accident, and he is committed to avoiding a recurrence by no longer drinking and driving. These facts, which lead to the application of the four mitigating factors referenced above, lead me to conclude that there is little or no chance applicant will exercise such poor judgment in the future. If it were not for 10 U.S.C. 986, I would conclude that it is clearly consistent with the national interest to grant applicant access to classified information at the present time. However, in light of this statute, I must conclude that it is not clearly consistent with the national interest to grant applicant a security clearance. However, I recommend further consideration of this case for a waiver of 10 U.S.C. 986.

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