

DATE: February 12, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-21077

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

William Fenton Sink, Esq.

SYNOPSIS

Applicant has not consumed alcohol during the past five years, and he is fully committed to abstaining from its use in the future. Clearance is granted.

STATEMENT OF THE CASE

On July 30, 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 23, 2002. The case was assigned to me on December 16, 2002. A Notice of Hearing was issued on December 20, 2002, and the hearing was held on January 10, 2003. The transcript was received on January 29, 2003.

FINDINGS OF FACT

Applicant is a 41 year old quality engineer. He served in the United States Navy from February 1989 to 1997.

Applicant consumed alcohol, at times to excess and to the point of intoxication, from approximately May 1987 to approximately November 1997.

In May 1987, applicant was arrested and charged with Driving Under the Influence of Alcohol (DUI) and a minor traffic offense. He was convicted of both charges, and was fined \$45.00, ordered to serve 72 hours of community service, and his drivers license was suspended for 90 days.

In July 1987, applicant was arrested and charged with DUI and Driving While License Suspended. He was convicted of DUI, and the other charge was dismissed. He was fined \$500.00, ordered to serve 80 hours of community service, and his drivers license was suspended for one year.

In July 1989, applicant received non-judicial punishment for the offense of Drunk On Duty. He was fined \$350.00 and restricted for ten days.

In June 1991, applicant was stopped on a military base and issued a citation for DUI, Disobeying a Lawful Order (failure to submit a breath sample), and Possession of an Open Container. The matter was apparently dropped by the military police because applicant was never required to respond to formal charges (TR at 54-56).

In November 1991, applicant was arrested and charged with DUI. He was found guilty of the charge. In February 1992, he was arrested and charged with DUI, Driving While License Suspended, and Driving Without Insurance. He was convicted of the charges. As a result of both convictions, applicant was sentenced to ten days in jail, fined approximately \$1,700.00, and his drivers license was suspended for 39 months (TR at 56-60).

In 1993, the Navy sent applicant to an inpatient alcohol treatment program. The program, which consisted of group therapy and one-on-one counseling sessions, lasted 30 days. Applicant testified that sometime around this time he was diagnosed as alcohol dependent (TR 62).⁽¹⁾ Applicant remained "clean" for about a year and then resumed drinking. He testified that he resumed drinking because he was in the Navy at the time and everyone he worked and lived with drank (TR at 63-64).

In March 1997, applicant was arrested and charged with Habitually Driving Under the Influence. He was found guilty, and in March 1998, he was placed on probation for five years. As part of the sentence of probation, applicant was required to: (1) obtain and maintain employment or attend educational/vocational training throughout the period of probation, (2) perform 200 hours of community service by July 1, 1999, (3) not possess, use or consume any alcohol, illicit drugs or paraphernalia, (4) submit to urinalysis, drug/alcohol assessment, and search, (5) maintain substance abuse treatment with the Veterans Administration until clinically discharged, and (6) comply with absolute revocation of drivers license. A December 2002 letter from applicant's probation officer (Exhibit D) corroborates applicant's testimony that he complied with all probationary requirements.⁽²⁾

Applicant received outpatient alcohol treatment at a Veterans Administration clinic two to three times per week from December 28, 1997 to April 30, 1998.

As a result of his last arrest and conviction, applicant was forced out of the Navy and divorced by his wife. He testified that at that point, "it just hit me. And, I knew I had to stop and change my life because I didn't want my life to go on like this anymore" (TR at 69). Applicant further testified that he last consumed alcohol sometime prior to his sentencing in March 1998, and that he does not intend to consume it in the future (TR at 69, 90). When asked why the Government should believe that he now has his alcohol problems under control, applicant made the following two statements:

Because I have not drank in five years. I know what alcohol did to me in the past. It destroyed my life. It destroyed my career. And, like I said, it caused me a lot of pain. I do not want to go through that again. I thought everything was in the past until now. And it's like a big wake-up call again reaffirming my conviction that I cannot drink alcohol without getting me in trouble (TR at 74).

Well . . . you know, I'm with people that do not drink. I love the Lord now. I'm changing my life around, and I do not want my life to go downhill. I seen where I was going. I hit rock bottom and it's not a very good place. And some day I do want to have a family and I know alcohol has no place in that. I'll never get a family if I keep drinking (TR at 90-91).

Applicant is not currently attending any type of alcohol after-care program or support group like Alcoholics Anonymous (AA). However, he testified that he has become an active member of his church, a fact corroborated by the testimony of his pastor, and he now associates with the "right people" which, according to applicant, is more helpful to him than attending AA (TR at 24-32; 72).

Letters from three of applicant's coworkers, including a current and former supervisor, were admitted into evidence (Exhibits A, C, and I). The coworkers are of the opinion that applicant is a hardworking and dedicated employee.

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. E2.A7.1.2.1: Alcohol-related incidents away from work.
2. E2.A7.1.2.2: Alcohol-related incidents at work.
3. E2.A7.1.2.5: Habitual or binge consumption of alcohol to the point of impaired judgment.

Mitigating Conditions:

- 1.E2.A7.1.3.2: The problem occurred a number of years ago and there is no indication of a recent problem.
2. E2.A7.1.3.3: Positive changes in behavior supportive of sobriety.

CONCLUSIONS

In this case, the Government alleges under Guideline G that applicant is ineligible to hold a security clearance because he consumes alcohol to excess which "often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness." In support of its case, the Government alleges that applicant (1) consumed alcohol, at times to excess and to the point of intoxication, from approximately May 1987 to at least November 1997 and (2) was involved in seven criminal incidents as a result of his consumption of alcohol. ⁽³⁾

The evidence supports all of the Government's factual allegations, and is sufficient to establish a *prima facie* case under Guideline G. Applicant's extensive history of alcohol abuse reflects adversely on his judgment, reliability and trustworthiness, and suggests that he cannot be relied upon to safeguard classified information. For the following reasons, however, I conclude that applicant has successfully overcome the Government's *prima facie* case:

1. Applicant recognizes that he acted irresponsibly in the past when he was drinking, and that he paid a heavy price for this irresponsibility; namely, the loss of his Naval career and his marriage. He testified, credibly, that he does "not want to go through that again."
2. He is sincerely committed to taking the necessary steps to ensure continued abstinence, as evidenced by his active involvement in his church and his change in lifestyle (i.e., he now associates with the "right people"). ⁽⁴⁾
3. Applicant has not consumed alcohol since November 1997, over five years ago. Although his probationary status during this time diminishes the weight given to his sobriety, it nevertheless leads me to conclude that applicant is truly on his way toward turning his life around and remaining abstinent. ⁽⁵⁾

FORMAL FINDINGS

PARAGRAPH 1: 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

1. Neither the qualifications nor the identity of the person making the diagnosis is in evidence. I therefore cannot give this diagnosis much weight.
2. Applicant has filed a motion for early termination of his probation (Exhibit G). A hearing on the motion has been set for January 14, 2003. Since applicant's probation officer does not object to the early termination of his probation (she actually suggested to applicant that he file the motion), it will, in all likelihood, be granted.
3. The Government did not allege that applicant is ineligible to hold a security clearance under Guideline J (Criminal Conduct).
4. Mitigating Condition E2.A7.1.3.3.
5. Mitigating Condition E2.A7.1.3.2.