

DATE: April 19, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-25466

**DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's intentional falsification of material facts regarding his alcohol-related criminal conduct on a Security Clearance Application (SCA) requires a denial of his clearance request. Clearance is denied.

**STATEMENT OF THE CASE**

On April 24, 2003, 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 1, 2003, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case (FORM) on or about September 15, 2003. Applicant filed a response to the FORM on or about October 3, 2003. The case was assigned to me on November 4, 2003.

**FINDINGS OF FACT**

Applicant is a 51 year old employee of a defense contractor.

In August 2000, applicant was arrested and charged with Driving Under the Influence (DUI). He pleaded no contest to the charge, and was sentenced to seven days in jail and fined approximately \$1,540.00.

In 1989, applicant was arrested and charged with DUI. He was found guilty, fined \$1,000.00, and ordered to perform community service.

In 1975, applicant was charged with Drunk Driving and Having An Open Container in Vehicle. The Drunk Driving charge was dismissed. Applicant was found guilty of the second charge and fined \$130.00.

Applicant drinks about two beers a day after work. He intends to continue drinking at this level, but does "not plan to drink and drive" (Exhibit 9).

Applicant executed an SCA in September 1999. 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 "no." This response was false because, as noted above, applicant had been charged with and convicted of alcohol-related offenses in 1975 and 1989. In Exhibit 9, applicant stated that he did not disclose the 1975 incident because he "didn't deem it relevant because of the time." As to why he didn't disclose the 1989 incident, he stated that he "must have been confused because some of the questions were for the last 7 years and others were 'have you ever.'" Applicant's explanations are not credible.

A letter from the man who has supervised applicant at his place of employment during the past ten years was admitted into evidence. In it, the supervisor states that applicant performs well at his job and has not had a "single day of absence" in the last 10 years.

### CONCLUSIONS

With respect to Guideline G, the evidence establishes that since 1975, applicant has been involved in three alcohol-related incidents that have resulted in criminal charges and convictions. This alcohol-related misconduct reflects adversely on his judgment, reliability and trustworthiness, and suggests he cannot be relied upon to safeguard classified information. This conduct also requires application of Disqualifying Condition E2.A7.1.2.1 (alcohol-related incidents away from work, such as driving under the influence . . .).

As of June 2001, which is the last time applicant commented on the subject, <sup>(1)</sup> his stated intention was to continue consuming alcohol at the rate of about two beers a day, but not to drink and drive. Given his (1) stated intention to consume two beers a day, which is, in essence, an intention not to drink to excess, (2) his stated intention not to drink and drive, and (3) the passage of time since he last consumed alcohol to excess (over three years), I conclude that applicant qualifies for Mitigating Conditions E2.A7.1.3.2 (the problem occurred a number of years ago and there is no indication of a recent problem) and E2.A7.1.3.3 (positive changes in behavior supportive of sobriety). I further conclude that applicant has overcome the Government's case under Guideline G.

With respect to Guideline E, applicant's falsification of material facts on the SCA concerning his alcohol-related criminal record 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 good judgment, reliability and trustworthiness required of clearance holders.

In this case, I have considered the letter from applicant's supervisor. This letter, however, falls far short of establishing that applicant is now reliable and trustworthy, and can now be relied upon to be truthful with the Government. Disqualifying Condition E2.A5.1.2.2 (the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . .) is applicable to this case. No Mitigating Conditions apply. <sup>(2)</sup> Based on the foregoing, Guideline E is found against applicant.

### FORMAL FINDINGS

PARAGRAPH 1: FOR THE APPLICANT

All subparagraphs found for the applicant

PARAGRAPH 2: 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.

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Joseph Testan

Administrative Judge

1. Applicant's July 2003 response to SOR Allegation 1a is essentially meaningless since he both admitted and denied this allegation without explanation.
2. Mitigating Condition E2.A5.1.3.2 does not apply because, although the falsification was not recent and appears to be an isolated incident, there is no credible evidence that applicant subsequently provided the correct information voluntarily.