

DATE: August 18, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-05746

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Brenda Dabdoub-Caballero, Esq.

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 February 4, 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 March 3, 2003. The case was assigned to the undersigned on March 19, 2003. A Notice of Hearing was issued on arch 26, 2003, and the hearing was held on May 1, 2003. The transcript was received on May 9, 2003.

FINDINGS OF FACT

Applicant is a 39 year old employee of a defense contractor.

In March 1998, applicant was arrested and charged with Driving While Intoxicated on a Suspended or Revoked License. He was found guilty of the charge, sentenced to one year in jail, and his license was suspended for 3 years (Exhibit 14). Applicant actually served eight months in jail (TR at 35).

In February 1995, applicant was arrested and charged with Driving Under the Influence of Liquor, Fleeing Officer, Possession of Drug Paraphernalia, and Assault (two counts). He was found guilty of Driving Under the Influence of Liquor, Fleeing Officer, Possession of Drug Paraphernalia, and one count of Assault. He was sentenced to one and one-

half years in prison (TR at 33-34).⁽¹⁾

In 1994, applicant was arrested for Disorderly Conduct/Language/Riot. The charges were dismissed. This was an alcohol-related incident (TR at 42-43).

In February 1991, applicant was arrested and charged with Driving with Blood Alcohol over .10%. He was found guilty and fined.

In August 1991, applicant was arrested and charged with Driving Under the Influence (DUI). He was convicted of the charge (TR at 39).

In 1984 and 1985, applicant was arrested for DUI.

It is obvious from the foregoing history that applicant had quite an alcohol problem. All of the criminal activity alleged in the SOR was alcohol-related, as were applicant's financial difficulties. Applicant readily admits he had an alcohol problem, and that it caused a lot of "heartache," but testified that he is "a different person now" (TR at 18). The facts support this assertion.

Applicant testified credibly that he has not consumed alcohol since the date of his last arrest in March 1998 (TR at 18). This testimony was corroborated by the testimony of his wife, mother, mother-in-law, and supervisor. Shortly after he was released from jail in late 1999 or early 2000, he attended and successfully completed a 20 hour alcohol relapse prevention program.⁽²⁾ Applicant testified credibly that he no longer has "the need or desire for alcohol" (TR at 19), and he does not intend to consume it in the future.

Since he stopped consuming alcohol five years ago, applicant's life has turned around. He has not been involved in any additional criminal activity; he has much better relationships with his wife, his parents and his children; his financial condition has greatly improved;⁽³⁾ and according to his current supervisor, he does "topnotch" work for his employer (TR at 50).

Applicant's mother testified that since applicant stopped drinking five years ago he is "more reliable, more loving, more caring with his family, his children, and with (her) too" (TR at 67). Applicant's mother-in-law testified that since he stopped drinking, applicant is "just a new person, completely new person" (TR at 77).

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 away from work.
5. Habitual or binge consumption of alcohol to the point of impaired judgment.

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.

Financial Considerations

Disqualifying Conditions

1. A history of not meeting financial obligations.
5. Financial problems linked to alcoholism.

Mitigating Conditions

6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Criminal Conduct

Disqualifying Conditions

2. A single serious crime or multiple lesser offenses.

Mitigating Conditions

1. The criminal behavior was not recent.
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

With respect to Guideline G, the evidence establishes that applicant had a severe alcohol problem from sometime in the 1980s to March 1998. His alcohol-related criminal conduct, standing alone, establishes this fact. The evidence further establishes, however, that for whatever reason, his last arrest in March 1998 provided him with both the insight and the willpower to overcome his alcohol dependence. The evidence clearly establishes that applicant (1) has not consumed any alcohol during the past five years, (2) no longer has the desire to consume alcohol, and (3) with the support of his wife and family, is firmly committed to abstaining from the use of alcohol. Given these facts, and the overwhelming evidence of a complete change in his lifestyle, I conclude that in all likelihood, applicant's abuse of alcohol will not

recur. Accordingly, Guideline G is found for applicant.

With respect to Guideline J, the evidence establishes that applicant's significant criminal conduct has all been alcohol-related. Because I concluded that applicant is unlikely to abuse alcohol in the future, I further conclude that applicant is unlikely to engage in criminal conduct 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 under Guideline J. 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.

With respect to applicant's child support debt, he fell behind on his payments when he was incarcerated (TR at 36). Applicant and his wife took out a loan which has been used to satisfy this past-due debt. Although applicant's failure to pay child support in a timely manner is not condoned, given his incarceration it is understandable, and in light of his recent good-faith effort to satisfy the child support debt, his financial misconduct is mitigated. Given this fact, and the lack of any evidence that applicant is currently experiencing financial difficulties, Guideline F is found for applicant.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST 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 not clearly consistent with the national interest to grant or continue a security clearance for applicant.

Joseph Testan

Administrative Judge

1. This sentence precludes applicant from holding a DoD security clearance under 10 U.S.C. 986.
2. Records from the program indicate that applicant received a diagnosis of Alcohol Dependence - Sustained Full Remission. The qualifications of the person providing this diagnosis cannot be determined from the records (Exhibit 5).
3. Applicant recently took out a home equity loan which was used to, among other things, satisfy the past-due child support he owed as referenced in SOR Allegation 3a.