

DATE: January 14, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-07832

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's criminal conduct requires a denial of his clearance request pursuant to 10 U.S.C 986. Clearance is denied.

STATEMENT OF THE CASE

On June 9, 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 June 23, 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 3, 2003. Applicant responded to the FORM on or about October 20, 2003. The case was assigned to me on October 27, 2003.

FINDINGS OF FACT

Applicant is a 40 year old employee of a defense contractor.

In 1984, applicant was arrested and charged with Driving While Intoxicated (DWI). He pleaded guilty and was sentenced to two days in jail and fined \$500.00.

In 1986, applicant was arrested and charged with DWI, 2nd Offense. He was sentenced to 80 hours of community service and ordered to attend an alcohol program.

In 1986 or 1987, applicant was arrested and charged with either Breaking and Entering or Trespassing. He was found

guilty of one of the charges and fined. Applicant was intoxicated at the time of his arrest.

In 1989, applicant was arrested for DWI, 3rd offense. After he was found guilty, he was sentenced to 180 days in jail, fined, and placed on probation.

In 1993, applicant was arrested and charged with DWI, 2nd offense. He was sentenced to two years in prison. All but seven days of his sentence was suspended.

In July 1995, applicant was arrested and charged with Public Intoxication. He pleaded guilty and was fined.

In December 1995, applicant was arrested and charged with DWI, 2nd offense. He was sentenced to two years in prison. It is unclear how much time, if any, he actually served.

In September 1997, applicant was arrested and charged with Criminal Trespass, 3rd degree. He pleaded guilty and was fined. He had been drinking at the time of his arrest.

Applicant's employment was terminated in 1998 for failure to show up for work. On the day in question applicant decided to drink instead of going to work.

Applicant had alcohol treatment in 1986, 1990, 1994 and 1996. Applicant states that he has not consumed alcohol since March 1998. He further states that he realizes he is untrustworthy when he drinks, realizes the damage that alcohol has done to him, and does not want "that lifestyle."

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

- a. Alcohol-related incidents away from work.
- b. Habitual or binge consumption of alcohol to the point of impaired judgment.

Mitigating Conditions

- a. The problem occurred a number of years ago and there is no indication of a recent problem.

Criminal Conduct

Disqualifying Conditions

- b. A single serious crime or multiple lesser offenses.
- c. Conviction in a Federal or State court of a crime and sentenced to imprisonment for a term exceeding one year.

Mitigating Conditions

a. The criminal behavior was not recent.

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 applicant was arrested and convicted of various crimes on at least eight separate occasions beginning in 1984 and ending in September 1997. The evidence further establishes that applicant consumed alcohol, often to the point of intoxication, from at least 1984 to early 1998. Applicant's excessive alcohol consumption and criminal conduct reflects adversely on his judgment, reliability and trustworthiness, and strongly suggests he cannot be relied upon to safeguard classified information.

With respect to Guideline G, applicant states that he has not consumed any alcohol since March 1998, over five years ago. The lack of any alcohol-related criminal conduct since then, and the two character reference letters applicant submitted in response to the FORM, support his assertion that he has been clean and sober for the past five plus years. Based on the passage of time since applicant last consumed alcohol, and his statement that he realizes the damage alcohol has done to him and does not want "that lifestyle," I conclude that applicant's excessive consumption of alcohol is most likely a thing of the past. Accordingly, Guideline G is found for applicant.

With respect to Guideline J, it appears that applicant has not been involved in any criminal activity since 1997. Since all of his criminal activity was alcohol-related, the fact that he is now clean and sober and likely to remain that way leads me to conclude that he is unlikely to engage in criminal activity in the future. Notwithstanding my belief that applicant has reformed, his two separate sentences of more than one year of imprisonment require a denial of his clearance request under 10 U.S.C. 986.⁽¹⁾ Accordingly, Guideline J is found against applicant.

FORMAL FINDINGS

GUIDELINE G: FOR THE APPLICANT

GUIDELINE J: 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

1. I do not recommend further consideration of this case for a waiver of 10 U.S.C. 986.