

KEYWORD: Alcohol

DIGEST: Although applicant's last alcohol-related incident occurred three years ago, he still consumes alcohol at the same level he was consuming it when he was last arrested for Driving Under the Influence (DUI). He has not established that he has reformed. Clearance is denied.

CASENO: 02-28904.h1

DATE: 01/25/2005

DATE: January 25, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-28904

**DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Nygina T. Mills, Department Counsel

**FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Although applicant's last alcohol-related incident occurred three years ago, he still consumes alcohol at the same level he was consuming it when he was last arrested for Driving Under the Influence (DUI). He has not established that he has reformed. Clearance is denied.

### **STATEMENT OF THE CASE**

On January 15, 2004, 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 January 23, 2004, 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 April 5, 2004. Applicant did not file a response to the FORM. The case was assigned to me on June 3, 2004.

### **FINDINGS OF FACT**

Applicant is a 46 year old employee of a defense contractor.

Applicant consumed alcohol, at times to excess and to the point of intoxication, from approximately 1971 to at least

August 12, 2002.

In 1975, he was dismissed from a preparatory school after being caught on two separate occasions under the influence of alcohol.

In 1984, he was arrested and charged with DUI. He was found guilty of the charge, sentenced to unsupervised probation, ordered to pay approximately \$277.50 in fines and/or costs, and ordered to attend DUI school.

In 1992, he was arrested and charged with DUI. After he was found guilty of DUI, he was ordered to pay approximately \$250.00 in fines and/or court costs, ordered to attend an Alcohol and Substance Abuse Program (ASAP), and his drivers license was restricted for one year. Following this incident, applicant decreased his alcohol consumption to an average of three to four beers three times a week, and has continued with this level of alcohol consumption through the present time.

On January 1, 2001, applicant was arrested and charged with DUI. He was found guilty of Reckless Driving, sentenced to 30 days in jail (suspended), ordered to pay fines and costs of \$1,500.00, and ordered to attend an ASAP. In addition, his drivers license was restricted for one year. After he completed the ASAP, which consisted of weekly sessions with a Licensed Professional Counselor from May 17 through October 4, 2001, he was placed on unsupervised probation and ordered to attend 20 Alcoholics Anonymous (AA) meetings. Applicant attended the AA meetings as ordered.

In a signed, sworn statement that he gave to the Defense Security Service (DSS) in August 2002, applicant stated that he feels he is a responsible drinker and sees no need to discontinue or further reduce his alcohol consumption. He further stated: "I normally do not drink to the point of intoxication and try to stay below any point of loss of control due to intoxicants." He further stated that since his last arrest, he has taken precautions to prevent any additional incidents. These precautions include going to bars within walking distance, discontinuing his alcohol consumption an hour before he drives, and using a Breathalyzer he purchased to test himself before he drives.

### CONCLUSIONS

The evidence establishes that applicant (1) consumed alcohol, at times to excess and to the point of intoxication, from approximately 1971 through at least August 12, 2002, and (2) has been arrested, charged and/or convicted of alcohol-related offenses on three occasions over a period of approximately 17 years. This conduct reflects adversely on his judgment and reliability. It also requires application of Disqualifying Condition E2.A7.1.2.1 (*alcohol-related incidents away from work, such as driving under the influence, fighting, child or spouse abuse, or other criminal incidents related*

to alcohol use).

Although applicant's last alcohol-related incident occurred approximately three years ago, he failed to establish he has reformed. Despite the trouble alcohol has caused him over the years, and the poor judgment he has exercised when under the influence of it, he still consumes it at the same level he was consuming it when he was last arrested in 2001. He states that he does not consider himself to be alcohol dependent, and continues to believe he is a responsible drinker who has no need to further reduce his alcohol consumption. These and other statements (e.g., "I *normally* do not drink to the point of intoxication) lead me to conclude that, although he has taken credible and responsible steps to avoid further alcohol-related driving incidents, he will, more likely than not, consume alcohol to excess in the future. For this reason, applicant does not qualify for Mitigating Condition E2.A7.1.3.2 (*the problem occurred a number of years ago and there is no indication of a recent problem*) or Mitigating Condition E2.A7.1.3.3 (*positive changes in behavior supportive of sobriety*).

### **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