

DATE: November 24, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30237

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's last alcohol-related incident occurred over six years ago. There is no evidence that he has consumed alcohol to excess in the last two years, and he has made the credible statement that he no longer consumes it. Clearance is granted.

STATEMENT OF THE CASE

On March 12, 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 March 29, 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 June 21, 2004. Applicant filed a response to the FORM on or about July 26, 2004. The case was assigned to me on August 2, 2004.

FINDINGS OF FACT

Applicant is a 30 year old employee of a defense contractor.

Applicant consumed alcohol, at times to excess and to the point of intoxication, from the time he attended High School to at least August 19, 2002.

In approximately April 1992, he was cited for being a minor in possession of alcohol. He was granted "diversion," and after he attended a one day alcohol awareness class, the charge was dismissed.

In August 1995, applicant was arrested and charged with Driving Under the Influence (DUI). After he pleaded guilty to DUI, he was fined and/or assessed court costs of approximately \$198.00, and ordered to attend an alcohol awareness class. In addition, his drivers license was suspended for one year. Applicant attended a two day alcohol awareness class.

In February 1998, applicant was arrested and charged with Operating a Vehicle While Intoxicated (OVWI) and three lesser charges. He was found guilty of OVWI, sentenced to 365 days in jail (all but two days suspended), fined and/or assessed court costs of approximately \$480.00, ordered to attend an alcohol awareness class, and placed on probation for one year. In addition, his drivers license was restricted for 180 days. The other three charges were dismissed.

In his response to the SOR, applicant stated that he believes his current alcohol consumption is not a security concern because he no longer consumes it "to excess/intoxication," and he no longer drives after drinking. In his more recent response to the FORM, he stated that he has "stopped consuming alcohol entirely as part of a health regimen."

CONCLUSIONS

The evidence establishes that applicant (1) consumed alcohol, at times to excess and to the point of intoxication, from the early 1990s to at least August 19, 2002, (2) has been arrested and/or charged with alcohol-related offenses on three occasions, and (3) has been convicted of alcohol-related offenses on two occasions. 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*).

Turning to the issue of mitigation, applicant's last alcohol-related incident occurred over six years ago. There is no evidence that he has consumed alcohol to excess since August 2002, and he has made the credible statement that he no longer consumes alcohol. These facts require application of 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*).

Based on the foregoing, I conclude that applicant has reformed and is unlikely to consume alcohol to excess in the future. For this reason, Guideline G is found for applicant.

FORMAL FINDINGS

PARAGRAPH 1: FOR THE APPLICANT

All subparagraphs found 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