

DATE: December 19, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-17511

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's last alcohol-related incident occurred over five years ago. He no longer consumes alcohol to excess. Clearance is granted.

STATEMENT OF THE CASE

On April 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, (as administratively reissued on April 20, 1999), 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 April 26, 2003. The case was assigned to the undersigned on August 27, 2003, and a Notice of Hearing was issued on September 19, 2003. The hearing was held on October 7, 2003. The transcript was received on October 20, 2003.

FINDINGS OF FACT

Applicant is a 42 year old employee of a defense contractor.

In 1992, applicant was arrested and charged with Driving Under the Influence (DUI). He was convicted of the charge.

In December 1997, applicant was arrested for DUI. In June 1998, before he appeared in court to answer the December 1997 charge, he was again arrested for DUI. The two cases were consolidated for trial, and in April 1999 he was convicted of felony DUI. He was sentenced to 90 days in jail (he actually served six weeks on work release), fined approximately \$800.00, ordered to serve 240 hours of community service, and placed on probation for three years.

Following his 1999 conviction, applicant abstained from the use of alcohol for "about two years" (TR at 55-56). He eventually resumed drinking, but not to excess. He now limits himself to two drinks (TR at 49). He is committed to not reliving "the errors of [his] past." [\(1\)](#)

Letters from 11 of applicant's coworkers were admitted into evidence (Exhibit C). In general, the coworkers describe applicant as honest and reliable.

POLICIES

Enclosure 2 of the Directive sets forth Guidelines (divided into Disqualifying Factors and Mitigating Factors) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

Alcohol Consumption

Disqualifying Conditions:

E2.A7.1.2.1: Alcohol-related incidents away from work

Mitigating Conditions:

E2.A7.1.3.1: The alcohol related incidents do not indicate a pattern.

E2.A7.1.3.2: The problem occurred a number of years ago and there is no indication of a recent problem.

CONCLUSIONS

The evidence establishes that applicant was arrested, charged and convicted of three alcohol-related driving offenses. Applicant's alcohol-related misconduct reflects adversely on his judgment, reliability and trustworthiness, and reasonably suggests he cannot be relied upon to safeguard classified information.

Following his last DUI arrest in 1998, applicant abstained from the use of alcohol for a couple of years. Although he eventually resumed drinking, he testified credibly that he no longer drinks to excess. Given this credible testimony, the passage of time since applicant's last alcohol-related incident (over five years), and the lack of any evidence that suggests applicant might not be able to follow through with his stated intention not to drink to excess in the future (e.g., a diagnosis of alcohol dependence), I conclude that applicant is unlikely to abuse alcohol in the future. Accordingly, Guideline G is found for applicant.

FORMAL FINDINGS

PARAGRAPH 1: 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

1. SOR Response, page 2.