

DATE: February 28, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-00558

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The fact that applicant is likely to continue consuming alcohol to the point of intoxication requires a denial of her clearance request. Clearance is denied.

STATEMENT OF THE CASE

On December 22, 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 on February 12, 2004, and elected to have her case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case (FORM) on or about May 12, 2004. Applicant filed a response to the FORM on July 20, 2004. The case was assigned to me on July 27, 2004.

FINDINGS OF FACT

Applicant is a 21 year old employee of a defense contractor.

Applicant consumed alcohol, at times to excess and to the point of intoxication, from approximately 1999/2000 to at least February 2004.

In December 2000, she was arrested and charged with Driving with a .08% or more blood/ alcohol level. In April 2001, she pleaded nolo contendere to the charge, and was placed on probation for 36 months, fined and/or assessed various fees in the approximate amount of \$1,519.00, and ordered to complete an alcohol program. In addition, her drivers license was suspended for one year.

Applicant attended the court-ordered alcohol program from May 10 to September 5, 2001. In her response to the SOR, applicant stated that the program helped her "approach not only drinking and driving responsibly, but also changed [her] outlook on drinking." She successfully completed her probation.

On September 19, 2003, applicant responded to interrogatories sent to her by DOHA. In her responses, applicant stated, among other things, that she still drinks beer, wine and/or liquor to the point of intoxication on a weekly basis, she was last intoxicated on September 11, 2003, and she intends to continue consuming alcohol. In her response to the SOR, applicant modified her response by stating she "only rarely" drinks to intoxication.

In her response to the FORM, applicant stated that her "drinking habit has become nonexistent; the instances where drinking is involved have decreased dramatically since the Security Clearance process began, and has continued to decrease considerably . . ."

CONCLUSIONS

The evidence establishes that applicant (1) consumed alcohol, at times to excess and to the point of intoxication, from approximately 1999/2000 to at least February 2004, and (2) was convicted of an alcohol-related driving offense in April 2001. This conduct reflects adversely on her judgment and reliability. It also requires application of Disqualifying Conditions 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*) and E2.A7.1.2.5 (*habitual or binge consumption of alcohol to the point of impaired judgment*).

Although applicant's last alcohol-related incident occurred over four years ago, she failed to establish she has reformed. It is clear that applicant has reduced the frequency and amount of her alcohol consumption. It is also clear that her alcohol-related driving arrest got her attention, and as a result, it is highly unlikely she will drink and drive again. For this reason, she qualifies for Mitigating Condition E2.A7.1.3.1 (*the alcohol-related incidents do not indicate a pattern*). However, based on her most recent statement on the subject of intoxication (i.e., her SOR response), she still consumes alcohol to the point of intoxication, albeit "rarely." This fact leaves me no choice but to conclude that, although she is unlikely to drink and drive in the future, she will, more likely than not, consume alcohol to the point of intoxication in the future. For this reason, she 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*). Based on the foregoing, Guideline G is found against applicant.

With respect to Guideline J, applicant's alcohol-related driving arrest requires application of Disqualifying Condition E2.A10.1.2.2 (*a single serious crime or multiple lesser offenses*). However, based on the evidence presented, particularly the evidence that it is highly unlikely she will drink and drive again, she qualifies for Mitigating Conditions E2.A10.1.3.1 (*the criminal behavior was not recent*), E2.A10.1.3.2 (*the crime was an isolated incident*), and E2.A10.1.3.6 (*there is clear evidence of successful rehabilitation*). Based on the foregoing, Guideline J is found for applicant.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST THE APPLICANT

PARAGRAPH 2: 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