

DATE: December 8, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-07874

**ECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's alcohol consumption became a security concern after it led to two DUI arrests. Following his last DUI arrest in 2002, he made the decision not to drive after consuming any amount of alcohol. Given this fact, the fact his current alcohol consumption is not excessive, and the fact his alcohol consumption is unlikely to become excessive in the future, he has established that he can now be relied upon to safeguard classified information. Clearance is granted.

**STATEMENT OF THE CASE**

On June 4, 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 June 29, 2004. The case was assigned to me on August 12, 2004. A Notice of Hearing was issued on October 6, 2004, and the hearing was held on November 8, 2004. The transcript was received on November 23, 2004.

**FINDINGS OF FACT**

Applicant is a 27 year old engineer.

With his parents knowledge and consent, applicant began consuming alcohol when he was a child. He began consuming alcohol outside the presence of his parents when he was 15 or 16 years old. At that time he would consume as many as five to six drinks at a time. His alcohol consumption has resulted his four citations/arrests.

In 1996, he received a citation for Minor in Possession of Alcohol. He was found guilty of the charge and fined

approximately \$157.00.

In 1997, he received a citation for Underage Consumption of Alcohol. He was found guilty of the charge, fined approximately \$240.00, and ordered to attend an alcohol addiction treatment program. Applicant attended the alcohol program, which consisted of an eight hour group session, as ordered (Exhibit F).

In 1998, he was arrested and charged with Driving Under the Influence (DUI). He was convicted of the charge, sentenced to one day in jail, fined approximately \$400.00, ordered to attend eight hours of drug and alcohol education, and ordered to attend a Mothers Against Drunk Driving meeting. Applicant complied with all court orders. Applicant testified credibly that on this occasion, the alcohol education had quite an impact on him because following this class, he would not drive if he believed his alcohol consumption left him over the legal limit to drive (TR at 30-31).

In August 2002, applicant was stopped by the police because his vehicle lacked a left side mirror. The police officer thought applicant might be intoxicated so he had him take two field sobriety tests, which registered .13% and .136% (Exhibits 2 and 3). As a result, he was arrested for DUI. He pleaded nolo contendere to an amended charge of Reckless Driving, and was sentenced to two years of summary probation, fined \$1,450.00, and ordered to attend a 12 hour alcohol and drug education program. Applicant completed the alcohol and drug education program in June 2003 (Exhibit A). He will be on probation until January 2005. Applicant testified that on the evening in question he had been counting his drinks to make sure he was not over the legal limit to drive, but miscalculated because he had not had anything to eat that evening (TR at 32-33, 49). This DUI incident made him rethink his drinking habits (Exhibit 2), and "opened [his] eyes" to the fact alcohol-related problems can occur even when you are trying to do the right thing (TR at 49-50). As a result of this incident, and to make sure there are no future alcohol-related driving offenses, applicant no longer drives after drinking any amount of alcohol. Instead, he takes a taxi (TR at 38, 50-53).

Although applicant has significantly reduced his alcohol consumption, he still consumes it, occasionally to the point of intoxication, which he defined as exceeding the legal limit to drive (TR at 39). However, there is no evidence that his alcohol consumption during the past several years ever reached the point that it would have adversely affected his ability to safeguard classified information. He testified credibly that he has never had a blackout, and has never passed out, from drinking (TR at 37).

A letter from applicant's girlfriend was admitted into evidence (Exhibit C). The girlfriend states that applicant is "extremely trustworthy, competent, and upstanding person."

### CONCLUSIONS

The evidence establishes that applicant has been convicted of four alcohol-related offenses. Although the 1996 and 1997 are too old and too minor to have much security significance, his two DUI arrests are significant. These 1998 and 2002 incidents reflect adversely on his judgment, reliability and trustworthiness, and require application of Disqualifying Condition E2.A7.1.2.1 (*alcohol-related incidents away from work*).

Applicant testified credibly that his last DUI arrest in 2002 opened his eyes to the dangers of alcohol abuse. It made him rethink his drinking habits, which led him to the decision not to drive after consuming any alcohol. Although he continues to consume alcohol, it has been years since he consumed it to excess (i.e., to the point his ability to safeguard classified information would be adversely affected).

Applicant's alcohol consumption became a security concern because it led to two DUI arrests in the last six years. The fact he no longer drives after consuming alcohol ensures there will be no additional alcohol-related driving incidents, thus eliminating this security concern. Given this fact, the fact his current alcohol consumption is not excessive, and the fact his alcohol consumption is unlikely to become excessive in the future, I conclude that applicant can now be relied upon to safeguard classified information. Applicant qualifies for 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.A7.1.3.1 (*positive changes in behavior supportive of sobriety*). Based on the foregoing, 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