

DATE: July 7, 1997

In RE:

Applicant for Security Clearance

ISCR OSD Case No. 96-0499

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

Appearances

FOR THE GOVERNMENT

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Department Counsel

FOR THE APPLICANT

John D. Morgan, Esq.

STATEMENT OF THE CASE

On September 9, 1996, 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) (copy appended) 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.

The applicant responded to the SOR in writing on October 3, 1996. The case was received by the undersigned on February 10, 1997. A Notice of Hearing was issued on January 16, 1997, and the hearing was held on February 26, 1997.

FINDINGS OF FACT

Applicant is a thirty-four year old divorced man. He is employed as a firefighter by a defense contractor.

Applicant consumed alcohol to excess with varying frequency from approximately 1978 to November 1995.

In May 1983, he was arrested and charged with Driving While Under the Influence (DWI). He pleaded guilty to the charge, was fined \$800.00-\$900.00, and ordered to attend an alcohol awareness class. Applicant attended the alcohol awareness class as ordered.

In June 1983, he was stopped for a traffic violation. He passed a field sobriety test and was released.

In April 1989, DOHA issued applicant an SOR that alleged he was ineligible for a security clearance because of his alcohol and drug use. Following an August 1989 hearing, the Administrative Judge issued a decision favorable to applicant, and in January 1990, he was granted a security clearance (G-10).

Applicant continued to consume alcohol, on "a rare occasion" to the point of intoxication, after the 1989 DOHA hearing. In 1993, he and his wife separated. The separation left applicant lonely and depressed, and to cope with these feelings he increased his alcohol consumption. This increased alcohol consumption became a concern to his family, and in June 1995, they persuaded him to get an alcohol evaluation. The alcohol evaluation resulted in a tentative diagnosis of "alcohol dependence - DSM-IV Code 303.91" (Exhibit 10). Despite this evaluation, applicant did not take any steps to deal with his alcohol problem.

On August 20, 1995, ⁽¹⁾ applicant was arrested and charged with DWI. ⁽²⁾ The attorney he retained to defend him referred him for another alcohol evaluation. The October 19, 1995 evaluation concluded that applicant is a "late early stage alcoholic" (G-30). On December 11, 1995, the court placed applicant in a two year deferred prosecution program. In order to get accepted into this program, applicant had to agree to accept two years of alcohol counseling. Applicant completed the first phase of the counseling, consisting of eight weeks in an Intensive Outpatient Program and eight weeks in a Sobriety Maintenance Program, on February 28, 1996 (G-14). Since March 7, 1996, he has participated in the outpatient follow up phase of the treatment program, and will continue to do so through November 1997. A January 1997 letter from applicant's probation officer (G-15) corroborates applicant's testimony that he has complied with the alcohol counseling requirements of the deferred prosecution program.

In addition to the formal alcohol counseling he is receiving, applicant has been attending two Alcoholics Anonymous (AA) meetings per week since November 1995. He acquired an AA sponsor and has completed all twelve steps of the AA program. He testified, credibly, that he intends to continue attending AA. He further testified that he has abstained from the use of alcohol since November 1995, and intends to remain abstinent. Now that he is living a clean and sober lifestyle he feels better about himself both physically and mentally (TR at 99).

Applicant's current chemical dependency counselor appeared at the hearing and testified that based on the "attitude" and "sincerity" applicant has shown, his prognosis for recovery is "good" (TR at 51).

Applicant used marijuana a few times a year from the late 1970s to July 1995. He purchased it on a few occasions during this time. He used cocaine on two occasions in the 1980s, the last time in 1987.

In a signed, sworn statement that he gave to the Defense Investigative Service in February 1989 (G-4), applicant stated he did "not enjoy smoking (marijuana) enough to jeopardize (his) career over it," and did "not intend to use it in the future." During the aforementioned August 1989 DOHA hearing, applicant testified that he did not intend to use marijuana again (TR at 134). Despite these statements, applicant used marijuana after the 1989 hearing, the last time in July 1995.

Applicant testified that when he stated in 1989 he did not intend to use marijuana again he meant it. As to why he did not follow through with his stated intention to abstain, applicant testified that each time he used marijuana he was consuming alcohol and "wasn't using (his) head like (he) should have been" (TR at 132-133). When asked how he could be sure he would not use marijuana again, applicant replied that he no longer consumes alcohol and stays away from friends that use it.

A fellow firefighter appeared at the hearing and testified on applicant's behalf. He testified that he has worked with applicant since 1988, at times as applicant's supervisor, and that to his knowledge applicant has not had any substance abuse-related problems at work. He further testified that applicant performs well at his job.

Letters from various individuals acquainted with applicant, including coworkers, supervisors and friends, were admitted in evidence. These letters establish that applicant is considered to be a reliable and trustworthy individual.

POLICIES

Enclosure 2 of the Directive sets forth the Adjudication Policy (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 Factors:**

1. Alcohol-related incidents away from work.
4. Habitual or binge consumption of alcohol to the point of impaired judgment.

Mitigating Factors:

3. Positive changes in behavior supportive of sobriety.

DRUG INVOLVEMENT**Disqualifying Factors:**

1. Any drug abuse.
2. Illegal drug possession.

Mitigating Factors:

2. The drug involvement was an infrequent event.
3. A demonstrated intent not to abuse any drugs in the future.

PERSONAL CONDUCT**Disqualifying Factors:**

None.

Mitigating Factors:

None.

CONCLUSIONS

In DOHA cases, the Government has the initial burden of producing evidence that reasonably suggests an applicant cannot be relied upon to safeguard classified information. If the Government meets its burden, it has established a prima facie case. Once the Government establishes a prima facie case, the burden shifts to applicant to produce evidence in refutation, extenuation, mitigation or reformation sufficient to establish that, notwithstanding the Government's prima facie case, he or she can be relied upon to safeguard classified information. In view of the Directive's requirement that a security clearance be granted only upon a finding that to do so is clearly consistent with the national interest, the applicant has a heavy burden.

In this case, the Government established a prima facie case. The evidence establishes that applicant (1) consumed alcohol to excess with varying frequency from approximately 1978 to November 1995, (2) used cocaine twice in the 1980s, and (3) used marijuana a few times a year from the late 1970s to July 1995. This consumption of alcohol to excess and abuse of illegal drugs, particularly after his 1989 DOHA hearing, reflects adversely on applicant's judgment, reliability and trustworthiness, and reasonably suggests that he cannot be relied upon to safeguard classified information for at least two reasons:

First, individuals granted access to classified information are responsible for safeguarding it twenty-four hours per day, seven days per week, on and off the job. An applicant who consumes alcohol to excess, or uses illegal drugs such as marijuana and cocaine, cannot be relied upon to meet his or her security responsibilities because the risk of an

unauthorized disclosure of classified information through neglect or inattention while intoxicated or "high" is too great. Second, applicant used marijuana for many years with full knowledge that each time he used it he was breaking the law. This suggests that applicant may be unwilling to abide by security regulations if he finds them in conflict with his personal wishes or desires.

Clearly, if applicant had not offered substantial credible evidence that he has reformed, he would not be eligible for a security clearance. The fact that he continued to consume alcohol to excess and use marijuana after his earlier DOHA hearing is a very serious matter that strongly militates against continuing his security clearance. However, after considering all of the evidence presented, I conclude that applicant has reformed and can now be relied upon to safeguard classified information.

Although applicant was in denial about his chemical dependency for a very long time, he was finally forced to confront his addiction following his second DWI arrest in 1995. Regardless of his motive in accepting the deferred prosecution deal, the evidence establishes that applicant's participation in the required alcohol counseling has been successful. In addition to finally accepting the fact that he is alcohol dependent, he understands that he must completely abstain from the use of alcohol, and recognizes that he will need to remain active in AA if he is to remain abstinent. These facts, together with his fifteen months of abstinence and his chemical dependency counselor's opinion that his chances for recovery are good, lead me to conclude that in all likelihood applicant's consumption of alcohol and abuse of marijuana will not recur. For this reason, Criteria G, H and E are found for applicant.

FORMAL FINDINGS

PARAGRAPH 1: FOR THE APPLICANT

PARAGRAPH 2: FOR THE APPLICANT

PARAGRAPH 3: 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. The court record indicates the arrest took place on August 20, 1995 (G-28). However, there is conflicting evidence on this point. See, e.g., Exhibits 3, 9, 10, 13, 28, and 30.
2. Applicant was also charged with refusing to submit to a breathalyser, which resulted in the suspension of his drivers license. However, a Hearing Officer subsequently ruled that applicant did not refuse the test, and reinstated his licence (G-33).