

DATE: December 10, 1997

In Re:

Applicant for Security Clearance

ISCR Case No. 97-0195

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On March 28, 1997, 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 April 29, 1997. The case was received by the undersigned on June 26, 1997. A Notice of Hearing was issued on July 8, 1997, and the hearing was held on October 1, 1997.

FINDINGS OF FACT

Applicant is a forty-one year old man. He is employed as a data manager by a defense contractor. He served in the U. S. Military from 1976 to 1994.

Applicant has regularly consumed alcohol, at times to excess, since 1969. He has been arrested and convicted of alcohol-related charges on three occasions.

In July 1989, he was arrested and charged with Driving Under the Influence (DUI). At the time of his arrest, his blood-alcohol level was at least .20%. He was found guilty of the charge and fined \$779.00. As a result of this incident, applicant's command suggested that he "volunteer" for inpatient alcohol treatment. Applicant did so, and in August and/or September 1989, he received approximately thirty days of inpatient alcohol treatment. Applicant abstained from the use of alcohol for approximately one year after this treatment.

On January 28, 1993, while he was TDY in another state, applicant was arrested and charged with DUI. Applicant failed to appear at a scheduled court appearance, and a warrant for his arrest was issued. The warrant is still outstanding. Applicant has tried to resolve the matter with the state authorities, but the authorities will accept nothing less than applicant's unconditional surrender. Applicant testified that he will continue trying to resolve the matter, but will not return to the state without any guidance as to his potential punishment. [\(1\)](#)

In September 1993 applicant was arrested for DUI while driving on a military installation. As a result, he received non-judicial punishment under Article 15 of the UCMJ consisting of a reduction in rank. Following this arrest, applicant again "volunteered" for thirty days of inpatient alcohol treatment. During this inpatient treatment in late 1993, applicant was diagnosed as alcohol dependent and advised not to consume alcohol. Applicant abstained from the use of alcohol for approximately six months after this treatment.

Although applicant's alcohol treatment made him realize "things had to change," he does not believe that he has to "refrain entirely from alcohol" (TR at 37). He intends to continue consuming it (TR at 43).

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.
3. Diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence.
4. Habitual or binge consumption of alcohol to the point of impaired judgment.
5. Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.

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) has consumed alcohol to excess with varying frequency since 1969, (2) has been arrested and convicted of three alcohol-related offenses, and (3) has been diagnosed as alcohol dependent. These facts reflect adversely on applicant's judgment and reliability, and reasonably suggest that he cannot be relied upon to safeguard classified information.

Applicant failed to rebut the Government's *prima facie* case. Applicant's intention to continue consuming alcohol, notwithstanding (1) the fact he has been diagnosed as alcohol dependent and (2) the fact he has been advised by medical professionals to completely abstain from its use, precludes a finding that his abuse of alcohol will not recur. For this reason, Criterion G is found against applicant.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST 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

1. Although it is clear that an arrest warrant was issued for applicant and that the warrant is still outstanding, there is conflicting evidence in the record regarding the disposition of the DUI charge. For example, in his September 24, 1996 statement to the Defense Investigative Service (DIS) (G-2), applicant stated that he appeared in court, pleaded guilty to a reduced charge of Reckless Driving, and was sentenced to a weekend in jail and fined \$600.00. In his response to the SOR, however, he indicated that he did not enter a plea in court, but rather received a letter in the mail advising him that he had been found guilty in absentia of Driving Under the Influence.