

DATE: November 14, 1997

---

In Re:

Applicant for Security Clearance

---

ISCR Case No. 97-0247

**DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Department Counsel

**FOR APPLICANT**

*Pro Se*

**STATEMENT OF THE CASE**

On April 8, 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 28, 1997, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case on or about June 30, 1997. The applicant did not file a response to the Government's case. The case was received by the undersigned Administrative Judge on August 14, 1997.

**FINDINGS OF FACT**

Applicant is thirty-seven years of age.

Applicant consumed alcohol, at times to excess and to the point of intoxication, from approximately 1978 to at least January 1997. During this time he was arrested and convicted of five alcohol-related offenses.

In September 1987 he was arrested and charged with Driving Under the Influence (DUI). He pleaded guilty to a reduced charge of "Wet Reckless," and was fined \$663.00.

In November 1988 he was arrested and charged with Driving Under the Influence with a Blood Alcohol content of .08% or more. He pleaded guilty to the charge, was fined \$2,450.00, and was placed on probation for five years.

In July 1992 he was arrested and charged with DUI. He pleaded guilty to the charge, was fined \$1,025.00, and was placed on probation for three years.

In October 1992 he was arrested and charged with DUI. He pleaded guilty to the charge, was sentenced to 360 days in county jail (240 days suspended), and was fined \$2,833.00. In addition, he was ordered to participate in a thirty month

alcohol treatment program. Applicant participated in the alcohol treatment program as ordered.

In March 1996, approximately five months after he completed the thirty month alcohol treatment program, applicant was arrested and charged with Driving With a Blood Alcohol Content of .08% or more. In August 1996, he pleaded guilty to the charge and was sentenced to 360 days in county jail (240 days suspended) and was fined \$2,924.00. In addition, he was ordered to participate in an eighteen month alcohol treatment program, and his drivers license was revoked for three years. Applicant began attending an alcohol treatment program in October 1996.

Applicant continues to consume alcohol, although not as frequently as he did when he was younger.

## 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:

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 under Criterion G. The evidence establishes that applicant consumed alcohol, at times to excess and to the point of intoxication, from approximately 1978 to at least January 1997, and that this excessive consumption of alcohol resulted in at least five arrests and convictions. Applicant's consumption of alcohol to excess, and his numerous alcohol-related arrests and convictions, reflect adversely on his 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 under Criterion G. The recency and extent of his alcohol abuse, together with his continued consumption of alcohol, preclude a finding that his abuse of alcohol is unlikely to recur. For this reason, Criterion G is found against him.

### 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