

DATE: February 2, 1998

In Re:

Applicant for Security Clearance

ISCR Case No. 97-0551

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Renee L. Stasio, Gray Cary Ware & Freidenrich

STATEMENT OF THE CASE

On August 5, 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.

Applicant responded to the SOR in writing on August 28, 1997. The case was received by the undersigned on November 3, 1997. A Notice of Hearing was issued on November 18, 1997, and the hearing was held on January 8, 1998.

FINDINGS OF FACT

Applicant is a forty-eight year old married man. He is employed as a manager by a defense contractor.

Applicant episodically consumed alcohol, at times to excess, from at least 1972 to July 6, 1997. He has been arrested and convicted of Driving Under the Influence (DUI) seven times as follows:

In 1972, he was arrested for DUI after he was involved in an accident. He was convicted and fined.

In 1977, he was arrested for DUI. He was convicted and fined.

In 1978, he was arrested for DUI. He was convicted, fined, and ordered to serve two days in jail.

In approximately 1983, he was arrested for DUI. He was convicted and fined. After this incident, applicant decided that he would no longer drink and drive.

In 1984, he was arrested for DUI. He was ordered to serve thirty days in jail, fined, and ordered to attend an alcohol traffic school. Applicant started, but did not complete, the alcohol traffic school. As a result, his license was suspended. Following this incident applicant told himself that he would no longer drink and drive.

On September 22, 1988, he was arrested for DUI and Driving With a Suspended License after he was involved in an accident. He was convicted of DUI, and the second charge was dismissed. He was sentenced to 180 days in jail (actual time served unknown), fined approximately \$1,000.00, placed on probation for three years, and ordered to attend an alcohol awareness program. ⁽¹⁾ In addition, his drivers license was revoked for three years. Applicant testified that this incident, together with the fact that some of his friends began expressing their concerns to him about his drinking, made him think that he might have an alcohol problem, and led him to abstain from the use of alcohol for the next eighteen months.

On April 28, 1995, he was arrested for DUI and Driving with a .20% or higher Blood Alcohol Level. He was found guilty of DUI and sentenced to two days in jail, fined approximately \$1,600.00, and ordered to attend an eighteen month alcohol treatment program. Applicant attended the alcohol treatment program from July 25, 1995 to January 25, 1997. A January 1997 letter from the clinical director of the program to the court that ordered applicant's attendance at the program (Exhibit 3) states that applicant "maintained very good attendance and participation" while attending the program, and that applicant's "prognosis for continued personal growth and no further alcohol related arrests in the future appears good at this time." However, the letter does not mention the fact that despite signing an agreement to completely abstain from the use of alcohol while attending the program, applicant consumed alcohol at least once in 1996.

Applicant testified that since April 1995, he (1) has not driven a car after consuming alcohol and (2) has consumed alcohol to the point of intoxication "zero to five" times (TR at 78-79). He further testified that after receiving a letter from the Government in July 1997 that questioned his judgment and reliability, his alcohol consumption "hit home," and he decided that from then on he was going to completely abstain from the use of alcohol. He further testified that he has followed through with that decision and has not consumed alcohol since July 6, 1997, and does not intend to consume it in the future.

In addition to deciding to completely abstain from the use of alcohol, applicant has taken at least two steps to help him follow through with his decision. First, he went to his personal physician for a referral to an alcohol program. He was referred to a licensed counselor who he has been seeing since September 1997. Although initially they were to meet once a week, they have been able to meet only eight times. However, they intend to get back to the once a week schedule, and applicant testified that he intends to continue seeing the counselor for "as long as it takes." The counselor appeared at the hearing and testified that applicant is still at the beginning of the therapy process, but to date has responded "very well." He further testified that applicant's "alcohol abuse problem is under control because he is not using it." He further testified that applicant's prognosis is "good." Second, applicant has been attending Alcoholics Anonymous (AA) on at least a weekly basis since July 1997. He has a sponsor and is currently working on the third step. He testified that he intends to continue attending AA.

Performance appraisals and other documentary evidence offered by applicant establishes that he performs well at his job.

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.

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) episodically consumed alcohol to excess from at least 1972 to at least April 28, 1995, [\(2\)](#) and (2) has been arrested and convicted of DUI seven times over an approximately twenty-three year period. These facts reflect adversely on applicant's judgment and reliability, and reasonably suggest that he cannot be relied upon to safeguard classified information.

It is clear that since July 1997, applicant has made a sincere, honest attempt to reform. In addition to making the decision to completely abstain from the use of alcohol, he sought professional help to explore the underlying reasons for his drinking, and has become a regular, productive member of AA. Applicant should be commended for such an effort. However, when assessing applicant's current suitability for a security clearance, his history of alcohol-related poor judgment cannot be ignored. On no less than seven occasions applicant drove his car while impaired by alcohol, and in doing so, put his life and the lives of innocent people at risk, as evidenced by the fact that on at least two of these occasions his car struck another car. These episodes of extremely poor judgment occurred over a long period of time, and some occurred after applicant had decided that he would no longer drink and drive. These facts lead me to conclude that, although applicant is sincerely trying to reform, it is too soon to safely conclude that his alcohol-related poor judgment 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. Applicant attended the one year alcohol awareness program as ordered.
2. In view of applicant's testimony that he consumed alcohol to intoxication "zero to five" times from April 1995 to July 1997, I cannot make the affirmative finding that his abuse of alcohol "occurred a number of years ago and there is no indication of a recent problem." Accordingly, Mitigating Factor 2 is not applicable.