DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 14-05737
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: Kenneth Rowland, Personal Representative

02/19/2016

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Decision

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant continues to consume alcohol, at times to intoxication, despite being diagnosed as alcohol dependent and completing three alcohol detoxification treatments, two alcohol rehabilitation programs, and counseling with a therapist. Clearance is denied.

Statement of the Case

On February 3, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline G, Alcohol Consumption, and explained why it was unable to find that it is clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR allegations on March 3, 2015, and he requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. On July 21, 2015, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On July 23, 2015, I scheduled a hearing for August 19, 2015.

I convened the hearing as scheduled. Six Government exhibits (GEs 1-6) and two Applicant exhibits (AEs A-B) were admitted into evidence without any objections. Applicant testified, as reflected in the hearing transcript (Tr.) received on August 27, 2015.

Summary of SOR Allegations

The SOR alleges under Guideline G that Applicant consumed alcohol, at times to excess and to intoxication, from the age of 15 to at least December 2014, when he was hospitalized for two days of alcohol treatment (SOR ¶ 1.a). The SOR also alleges that Applicant was diagnosed with alcohol dependence while in treatment with a mental health provider from March 2010 through April 2013 (SOR ¶ 1.b) and during hospitalizations for alcohol treatment in March 2010 (SOR ¶ 1.c), February 2010 (SOR ¶ 1.d), and May 2006 (SOR ¶ 1.e). Applicant admitted the allegations with some explanations.

Findings of Fact

Applicant's admissions to the allegations are accepted and incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 56-year-old structural designer, who has been employed by the same defense contractor since June 1982, except for a layoff in 2006. He worked as a carpenter for his first 15 years on the job. (GEs 1-3, 5.) He has held a DOD secret security clearance since August 2002. (GE 1.)

Applicant and his ex-wife married in June 1984, separated in May 2011, and divorced in late 2013. (GEs 1, 4; Tr. 32.) They had a son in 1987 and a daughter in 1989. (GE 1.)

Applicant has a long history of alcohol abuse. He began drinking alcohol at age 15 in quantity of a half pint of brandy once a week on Fridays. (Tr. 41.) Around age 17, Applicant started consuming alcohol on a daily basis, from two to eight beers a day. He drank to intoxication about twice monthly. He refrained from drinking any alcohol for approximately nine months during the late 1980s, to show his then spouse that he could abstain. His alcohol consumption increased over time to where it caused significant marital difficulties. (GEs 3, 5.)

After drinking a pint of vodka per day for months, Applicant self-referred for inpatient alcohol detoxification treatment at a hospital (hereafter hospital X) on May 26, 2006, at the urging of his spouse. (Tr. 29.) He was unemployed after being laid off in March 2006 and

not coping well with his unstructured time. Following an uneventful detoxification, Applicant transitioned to the hospital's ambulatory drug and alcohol rehabilitation program for treatment of diagnosed alcohol dependence on May 28, 2006. He received counseling, participated in Alcoholics Anonymous (AA), and took Antabuse. He was discharged on June 5, 2006, condition improved, to follow up with individual outpatient therapy. (GE 5.) Applicant was advised to stop drinking. (Tr. 29, 33.)

Applicant abstained from alcohol for about nine months. After his spouse wrongly accused him of drinking, he became aggravated and turned to alcohol. (Tr. 35.) He testified that he drank beer (Tr. 36), but medical records report that he drank about a pint of whiskey a day for the next 2.5 years. (GE 4.)

In mid-February 2010, Applicant sought medical care for abdominal pain and spasms. The physician on duty advised that he obtain alcohol detoxification. (Tr. 37.) On February 15, 2010, Applicant was admitted for alcohol detoxification to hospital Y. He reported no blackouts but admitted that he had morning tremors.[1] Diagnosed as alcohol dependent, Applicant tolerated the detoxification protocol and was assessed as clinically stable at discharge on February 18, 2010. (GE 6.) Applicant elected not to follow-up in hospital Y's 12-step program because "it was more drug addicts there just for drugs." (Tr. 39.)

On February 24, 2010, Applicant admitted himself for alcohol rehabilitation treatment in a partial hospitalization program at hospital X. Diagnosed with alcohol dependence on admission, Applicant reported efforts to change his routines to avoid drinking but also urges to drink alcohol. At discharge on March 2, 2010, he was diagnosed with alcohol dependence and with depressive disorder, not otherwise specified. His insight and judgment were assessed as limited, but improving. He was sober while in treatment, but had not been fully engaged in his recovery. He saw his alcohol problem as not as bad as others and believed that he could will himself to abstain from using alcohol. (GE 5.) Applicant did not attend a 12-step program after his discharge. (Tr. 47.)

Applicant needed a psychiatric consult for his insurer to cover the costs of his alcohol program. On March 12, 2010, he was evaluated by an independent licensed clinical social worker (LICSW) in a private mental health practice.[2] The LICSW diagnosed Applicant with alcohol dependence and depression. He recommended psychotherapy to work on relapse prevention skills and involvement in a 12-step program. Applicant began individual counseling with the LICSW for his alcohol dependency problem, weekly in March 2010 and then twice a month from April 2010. Applicant attended AA only once, which was early in his psychotherapy. There are no records in evidence of counseling with the LICSW between July 7, 2010, and November 3, 2010, when Applicant reported an increase in

[1] Applicant sought alcohol detoxification on medical advice. He testified that he was having tremors, which he attributes not to alcohol but to "a lot of different diseases" caused by working with air tools and jackhammers. (Tr. 38.)

[2] Applicant testified that he was required by his medical insurer to see a psychiatrist and that he began his counseling on his first discharge from hospital X. Available treatment records (GE 4) do not confirm any treatment before March 2010, which was after his second program at hospital X.

work-related stress and anxiety. (GE 4.) Applicant had received a written warning at work for poor attendance in October 2010 (GE 1), but there is no indication that alcohol was involved.

Available therapy and medication management progress notes from November 2010 to January 2011 show improvement in Applicant's mental health from his psychopharmacological treatment and individual psychotherapy. The evidentiary record includes no counseling records after January 7, 2011, until April 13, 2011, when Applicant reported "thoughts of drinking" to his therapist. As of May 4, 2011, his alcohol problem was considered in remission in that he had not relapsed into drinking. (GE 4.)

Marital discord led to Applicant moving from the marital home in late May 2011 and to his ex-wife filing for divorce around October 2011. (GE 3.) After being injured at work in mid-April 2012, Applicant was placed on medical leave. During a counseling session with his therapist on May 25, 2012, Applicant was angry about being out of work. He "felt like drinking,' but he stayed away from alcohol. On June 22, 2012, he reported to his therapist increased urges to drink alcohol after his worker's compensation claim was denied. (GE 4.)

Around mid-July 2012, Applicant had increased anxiety at not being medically cleared to return to work and because of his impending divorce. In September 2012, Applicant had a favorable resolution to a pay dispute with his employer over his compensation during his lengthy medical leave. Yet, conflict with his now ex-wife over financial issues delayed their divorce. During a session for medication management on December 28, 2012, Applicant was diagnosed with generalized anxiety disorder and depression. (GE 4.) There is no evidence that Applicant was formally discharged from his therapy at that point, but the record also does not show that Applicant continued in his therapy after December 2012.

Applicant relapsed into drinking alcohol in late January 2013, following the death of his mother. (GE 3; Tr. 40-41.) He started drinking a couple of beers and two nips of whiskey at a sitting two or three nights a week. (Tr. 42-43.) He drank more on the weekends, about six beers in a day ("like a beer an hour or a beer every two hours"). (Tr. 44-45.) Applicant was still out of work as of his last documented session with his psychiatrist on April 9, 2013. His psychiatrist noted "controlled ETOH"[3] and diagnosed Applicant with depression. (GE 4.) Applicant does not now know when or why he ended this therapeutic relationship. (Tr. 47-48.) He has not taken any psychiatric medications in two years. (Tr. 57.)

Around September 2013, Applicant returned to work with the defense contractor. (GE 3.) On September 10, 2013, Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP) to renew his secret

[3] ETOH is an acronym for ethyl alcohol, the intoxicating ingredient found in all alcoholic beverages. *See* www.medilexicon.com; https://www.nim.nih.gov. It is unclear whether the psychiatrist meant by "controlled ETOH" that Applicant's alcohol problem was in control or alternatively that Applicant was controlling his alcohol intake.

clearance. Applicant listed voluntary alcohol counseling at hospital X in 2006 and at hospital Y in 2010. (GE 1.)

On October 3, 2013, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant indicated that he has been in counseling with a LICSW since 2009 [sic] because he felt underappreciated at work;[4] that he voluntarily sought inpatient alcohol treatment at hospital X in 2006 in an attempt to reduce his alcohol consumption; and that he had five days of outpatient alcohol counseling at the hospital in June 2010 [sic] on medical advice. Applicant reported that he has been consuming from two to eight beers a day since he was age 17, except that he abstained for about nine months 25 years ago to show his wife that he could abstain. Applicant admitted that twice monthly he consumed alcohol to intoxication, which for him took six or more beers. Applicant expressed intent to continue drinking alcohol at his current rate as he believed he does not have an alcohol problem. (GE 3.)

On October 21, 2013, the OPM investigator asked Applicant for further clarification on some issues, including about his treatment at hospital Y in 2010. Applicant indicated that he voluntarily sought the treatment, which consisted of 12-step work and group counseling, in an attempt to fix his marriage. (GE 3.)

Applicant underwent alcohol detoxification treatment at hospital X for three days in December 2014. He testified that he had "a lot of time doing nothing" during a work shutdown and drank in quantity up to eight beers at a sitting. He called his ex-wife and she took him to the hospital. (GE 3; Tr. 46, 48, 60.) He declined recommended aftercare because he had completed the hospital's 12-step program in the past. He was very familiar with the program and so knew what he should be doing. (Tr. 49.)

Applicant continues to consume alcohol, against clinical advice, after his alcohol detoxification treatment in 2014. (Tr. 49.) He self-medicates with alcohol "to release the pressure." (Tr. 51-52.) He drinks alcohol primarily on the weekends. "Every once in a while," including as recently as early August 2015, he consumes up to eight beers over eight hours while at a campground. (Tr. 60-62.) While watching a sporting event on television on August 16, 2015, Applicant drank enough alcohol to exceed the legal limit for safe driving. (Tr. 50.) He does not believe that his alcohol consumption has ever posed a security threat. (Tr. 30, 54-56.) Applicant has never had any alcohol-related incidents on or off the job. (Tr. 50.) He admits that he suffered an alcohol-related blackout "a couple of times." Applicant considers his current alcohol consumption to be average. (Tr. 55.) He does not drink before reporting for work. (Tr. 58.)

Applicant's union representative has known Applicant for about 18 years. He attests to Applicant being a conscientious worker and person of integrity. (AE B.) A design supervisor, who had worked closely with Applicant for about four years as of March 2015, found Applicant to be calm under pressure, approachable, and concerned with the quality

[4] Applicant apparently told the OPM investigator that he was still in counseling under the supervision of his therapist. (GE 3.) However, progress notes from the practice fail to corroborate any sessions with the LICSW after December 28, 2012, or with his psychiatrist after April 9, 2013. (GE 4.)

of his work. Applicant has consistently displayed honesty and trustworthiness when carrying out his duties. (AE A.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline G, Alcohol Consumption

The security concern for alcohol consumption is set out in AG ¶ 21:

> Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

Applicant started drinking at age 15, about a half pint of brandy on Friday nights. Around 1976, he began drinking alcohol daily, including to intoxication about twice a month. By the late 1980s, his drinking was apparently of such concern to his now ex-wife that Applicant stopped drinking for nine months to prove to her that he could abstain. However, by 2006 he had developed a serious alcohol problem. After drinking a pint of vodka daily for several months, Applicant underwent voluntary treatment for diagnosed alcohol dependence from May 26, 2006, to June 5, 2006. Advised to stop drinking, Applicant abstained for about nine months before relapsing in 2007 out of anger at his then wife, who had accused him of drinking. He reports that he drank beer, but medical records indicate that he consumed about a pint of whiskey per day for the next 2.5 years. In February 2010, he underwent alcohol detoxification on medical advice and completed an intensive outpatient program for alcohol dependence. With individual counseling from a therapist and pharmacological management monitored by a psychiatrist, Applicant consumed no alcohol from February 2010 through December 2012. Yet, shortly after his last psychotherapy session of record, Applicant relapsed in January 2013 when his mother died.

As of his OPM interview in October 2013, Applicant was drinking two to eight beers a day and becoming intoxicated twice a month. During a work shutdown in December 2014, he admitted himself for alcohol detoxification. Despite being advised to abstain completely from alcohol, he continued to drink on the weekends after that detoxification effort, in quantity ranging from a couple of beers at home to as many as eight beers when at a campground. Applicant consumed approximately six beers on the Sunday preceding his security clearance hearing, and he exhibited no desire or intent to change his drinking habits. While his abusive drinking has not caused him legal or work problems, doubts arise about his ability to adhere to his security responsibilities on those occasions when he is intoxicated or has an alcohol-related blackout. He admitted having a couple of alcohol-related blackouts, although he was not specific about the time or circumstances. Under AG ¶ 22, four disqualifying conditions are established to a greater or lesser extent:

> (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;
>
> (d) diagnosed by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

(e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program; and

(f) relapse after diagnosis of alcohol abuse or alcohol dependence and completion of an alcohol rehabilitation program.

Applicant engaged in habitual binge consumption when he drank a pint of whiskey per day against medical advice for some 2.5 years after he completed an alcohol program at hospital X in 2006. His drinking of eight beers to intoxication, including on occasion during the summer of 2015, would also implicate AG ¶ 22(c). Applicant has been diagnosed with alcohol dependence by several medical providers. Both AG ¶¶ 22(d) and 22(e) apply. His relapses from 2007 to February 2010 and from January 2013 to at least August 2015 followed alcohol rehabilitation treatment, so AG ¶ 22(f) is clearly established.

None of the mitigating conditions under AG ¶ 23 apply. Applicant's ongoing consumption of alcohol against medical advice, at times to intoxication, removes AG ¶ 23(a) from serious consideration. AG ¶ 23(a) provides:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment.

The voluntariness of Applicant's alcohol treatments is a factor in his favor, although his motivation for his treatment in 2006 was to improve his relationship with his spouse and not to deal with an acknowledged alcohol problem. In 2010, he sought medical care for abdominal spasms and was advised to seek alcohol treatment. He recognized that he needed alcohol detoxification after drinking to excess during a work shutdown in December 2014. Yet, he declined to participate in another alcohol rehabilitation program at hospital X because he had already been through the program. He chooses not to abstain from alcohol and does not believe he has an alcohol problem. While there is some evidence of positive actions taken to overcome his alcohol problem, I cannot apply AG ¶ 23(b), which provides:

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser).

Furthermore, without professional counseling or even AA to ensure that his alcohol consumption does not get out of control, Applicant does not benefit from either AG ¶ 23(c), "the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress," or AG ¶ 23(d):

> (d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

When viewed in its totality, Applicant's abusive relationship with alcohol is well established and not mitigated under Guideline G.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).[5] Applicant's many years of productive work for his defense contractor employer weigh in his favor under the whole-person assessment. The DOD seeks to encourage those employees with security clearance to seek treatment when needed. At the same time, the DOD has a legitimate expectation that the employee will commit himself or herself to recovery.

Applicant's extensive history of alcohol abuse with multiple alcohol detoxification and treatments raises significant security risks. His ongoing consumption of alcohol, at times to intoxication, presents an unacceptable risk of future impairment inconsistent with the good judgment that must be required of persons with access to classified information. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). After considering all the facts and circumstances, I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance at this time.

[5]The factors under AG ¶ 2(a) are as follows:

> (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G: AGAINST APPLICANT

Subparagraph 1.a-1.e: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge