DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 06-26704
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Alison O'Connell, Esquire, Department Counsel
For Applicant: *Pro Se*

March 6, 2008

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted his security clearance application (e-QIP) on October 26, 2005. On August 31, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline G. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on September 11, 2007. He answered the SOR in writing and requested a hearing before an Administrative Judge on October 3, 2007. Department Counsel was prepared to proceed on November 20, 2007. The case was assigned to me on November 28, 2007. On December 10, 2007, I scheduled a hearing for January 24, 2008.

I convened the hearing on January 24, 2008, as scheduled. Before presenting his case, Applicant indicated he had inadvertently requested a hearing, that when he informed DOHA he wanted a decision based on the written record, he was told it was too late (Tr. 26-42). With Department Counsel's agreement, I gave Applicant the opportunity to suspend the proceedings with a referral of the case to DOHA for preparation of a File of Relevant Material under ¶ E3.1.7 of the Directive. Applicant elected to continue with the hearing. Three government exhibits (Ex. 1-3) and one Applicant exhibit (Ex. A) were received into evidence without objection and Applicant testified, as reflected in a hearing transcript (Tr.) received by DOHA on February 5, 2008.

At Applicant's request, the record was held open until February 7, 2008, for Applicant to submit character reference statements and written closing argument. Applicant timely submitted a character reference from his supervisor and his written closing. Department Counsel indicated on February 8, 2008, that the government had no objections. The character reference letter was admitted into evidence as Exhibit B and the closing argument accepted for consideration. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

DOHA alleged under Guideline G, alcohol consumption, that Applicant was arrested and convicted of a 1978 public drinking charge (SOR ¶ 1.a) and of April 1988 (SOR ¶ 1.c) and September 1990 (SOR ¶ 1.d) driving under the influence of alcohol (DUI) offenses, and was arrested for disorderly conduct in 1987 (SOR ¶ 1.b). DOHA further alleged that he consumed alcohol for most of his adult life, at times to excess (SOR ¶ 1.e); that he continues to drink (SOR ¶ 1.f); that he received alcohol treatment at a general hospital in 1988, 1991, and 1992 (SOR ¶ 1.g), as an inpatient at a treatment center for diagnosed alcohol dependence in May and June 1990 (SOR ¶ 1.h) and court-ordered alcohol education at a hospital in July 1991 (SOR ¶ 1.I). When he answered the SOR, Applicant admitted without explanation the alcohol-related charges and treatment. He denied he had consumed alcohol for most of his adult life, at times to excess, and that he continues to drink. After consideration of the evidence of record, I make the following findings of fact.

Applicant is a 52-year-old custodian who has worked for a defense contractor since April 2005. He seeks a security clearance for access to certain areas of the facility. He held a confidential-level security clearance in the late 1980s for his work with another defense contracting firm (Tr. 58, Ex. 1).

Applicant consumed vodka to intoxication between the ages of 11 and 12, about once a month when he could sneak some from his parents' supply. He then refrained from drinking for a couple of years until age 15 or 16. Thereafter he consumed alcohol to obtain "a buzz." On three or four occasions, he was arrested for alcohol-related

offenses while still a juvenile (Tr. 67). In 1978, he paid a $50 fine for public drinking on the beach (Tr. 68).

In June 1985, Applicant and his spouse married. She had three young daughters from a previous relationship that she and Applicant raised together (Tr. 57).

In 1987 he was arrested for disorderly conduct but the charge was dismissed, and Applicant denies he was drunk (Tr. 68). After his mother died in 1987, he turned to alcohol to cope. Employed at the time by a defense contractor, Applicant was reprimanded for reporting to work while intoxicated (Tr. 64). He participated in three weeks of alcohol treatment (group sessions and 12-step programs) to save his job and did not think he had an alcohol problem (Tr. 69-71).

In April 1988, he was arrested for DUI. He was found guilty and his license was suspended (68-69). He attended alcohol education sessions at a local hospital once or twice a week for about four months in 1988 (Tr.72-73), but it had little effect on his drinking. In 1989, his brother died unexpectedly from an overdose (Tr. 62-63). Applicant continued to consume alcohol (beer and whiskey) to excess, and to have problems at work due to drinking ("At [defense contractor X], they used to have parties and the bosses would bring in booze and everybody got drunk." Tr. 63). After reporting for duty drunk on about a half-dozen times, he was eventually fired from his defense contractor employment that he had held for some 10 or 11 years (Tr. 56, 63-64, 95).

Realizing he needed help to deal with his drinking problem (Tr. 50), Applicant admitted himself to a treatment center in May 1990. He was treated as an inpatient until sometime in June 1990. Applicant found the treatment beneficial as it taught him how to deal with his feelings and to not blame others for his drinking (Tr. 51-52, 100). Applicant was told by his counselors that he had an alcohol problem. He is not sure whether he was diagnosed as alcohol dependent (Tr. 75).

In September 1990, Applicant was arrested for his second DUI. He was convicted and sentenced to three months in the house of corrections (suspended), fined, and required to attend an alcohol education program. Applicant participated in the court-ordered alcohol education program in July 1991. He also returned to the local hospital for alcohol counseling in 1991 (Tr. 77-79). Applicant was advised by several of his counselors that he should abstain from drinking. He took from his various treatment programs that drinking was a personal choice and to take responsibility for his decisions, including whether to drink (Tr. 101).

By 1992, Applicant had stopped drinking but he was still having problems dealing with his brother's untimely death. On the verge of relapsing, Applicant had himself admitted to a local hospital for about a week ("I don't believe I got into a program. I think they gave me a bed for about a week . . . " Tr. 77-78).

Following eight or so months of abstinence from alcohol (Tr. 81), Applicant began drinking beer socially while shooting pool, attending weddings, and on holidays (Tr. 84).

Since Applicant resumed drinking in 1992/93, he has consumed alcohol to the point of being "a little buzzed." (Tr. 84). He also has consumed alcohol while alone ("Maybe, I don't know, once in a while you have a tough night or a night cap to go to sleep, yeah, I've done that." Tr. 85).

In October 1994, he and his spouse moved to another state and in April 1995, he started working as a crew leader (Ex.1). In 2002, they returned to their present locale and Applicant worked as a maintenance mechanic for a commercial tool company until he started with his present employer in April 2005 (Ex. 1).

In early August 2002, Applicant began medical treatment for chronic pain with a local physician within a group practice in internal medicine. Detecting an odor of alcohol about Applicant during some office visits, the doctor asked Applicant about his drinking. Applicant told the physician on many occasions that his alcohol use was occasional and he never had a problem with alcohol in the past (Ex. 3).[1] The physician suspected it was not the case. (Ex. 3)

On October 26, 2005, Applicant completed an electronic questionnaire for investigations processing (e-QIP). In response to question 23.d, "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?", Applicant listed his April 1988 DUI. Concerning any previous clearance investigations (question 26), Applicant indicated he was granted a confidential-level clearance in June 1984, and added:

> THERE WAS ALSO AN INVESTIGATION FROM [employer omitted] BEFORE SOME ??? FEDERAL C.I.A. THINGY [sic]. I WAS A REBEL WITH SAFETY ISSUES THAT I FEEL THEY WOULD RATHER SEE ME GONE THAN DEAL WITH 'EM. I'M SURE WE'LL TALK SOME MORE ABOUT THIS SO UNTIL THEN, OH BY THE WAY, I WAS CLEAN (Ex. 1).

On March 10, 2007, Applicant responded to alcohol and drug interrogatories from DOHA. Applicant admitted he was currently drinking beer ("beer is my choice–maybe a glass of wine for words at a wedding"). He described the frequency of his consumption as occasional, during the Super Bowl, and at social events or weddings. He denied drinking to intoxication and indicated that although he had reported to work under the influence of alcohol and had received treatment due to alcohol, it was "some 15 years ago." Applicant responded affirmatively to whether he intended to drink alcoholic beverages in the future, and stated, "Alcohol is a substance in which I can have a few in social events. Now this is o.k. The need to end up stupid has long past." Applicant explained he was taking prescribed medication for pain. Being forced to choose

[1]When asked whether he had lied to his doctor about his drinking, Applicant responded, "I don't think it ever came up in detail, I think he asked me simply if I have a problem with alcohol and I told him no." (Tr. 91). Applicant also denies he went to an office visit with alcohol in his system. While his physician suggested to him that he abstain, Applicant testified he volunteered to undergo random testing to confirm for his physician that he wasn't drinking before his visits (Tr. 91-93).

between drinking beer and taking his pain medication, he prefers to not be in pain and drinks juice or water most of the time (Ex. 2, Tr. 86).

On May 1, 2007, Applicant admitted to his physician during an office visit that he had "a prior addiction to alcohol," but denied it was an ongoing problem. He admitted to still drinking on occasion. His doctor advised him to refrain from drinking any alcohol. Applicant agreed to abstain and to submit to random alcohol testing by his physician (Ex. 3).

As of January 2008, Applicant was still drinking alcohol "once in a while." He claimed to have no recall of when he was last intoxicated but estimated it was within the past five years. He consumed some punch on December 31, 2007, but not to the point where he felt "buzzed" (Tr. 85). He denies consuming more than three beers on any single occasion in 2007 (Tr. 101). Applicant does not believe he has a problem with alcohol currently (Tr. 54, 91). Applicant intends to continue drinking socially, but he sees his social consumption "slowly slipping away" as his medicines are likely to get stronger (Tr. 106). Applicant does not foresee losing control over his drinking but should it happen, he would seek professional help (Tr. 52).

Applicant's supervisor has not seen any indication of Applicant being under the influence of alcohol at work. He has been comfortable with Applicant and his performance (Ex. B).

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and common sense 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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 the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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 relating to the guideline 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 untrustworthiness." Applicant's underage drinking as a teenager led to his arrest on three or four occasions (Tr. 67) and he was fined $50 in 1978 for drinking in public on the beach (SOR ¶ 1.a). While an alcohol-related arrest raises concerns under AG ¶ 22(a) ("alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent"), his abuse was episodic at that time and likely due to his immaturity.

The government did not establish that Applicant was impaired by alcohol when he was arrested for disorderly conduct in 1987 (SOR ¶ 1.b), but that same year, Applicant began to abuse alcohol to cope with the death of his mother. Over the next few years, he abused alcohol with significant negative impact on his judgment and reliability, as evidenced by two convictions for drunk driving in April 1988 (SOR ¶1.c) and September 1990 (SOR ¶ 1.c). AG ¶ 22(a) applies. He also lost a long-held job with a defense contractor for repeatedly reporting to work under the influence (*see* ¶ 22(b) ("alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is

diagnosed as an alcohol abuser or alcohol dependent")). The government did not cite his job termination as a specific basis for denial, but it is relevant in that it shows the pervasiveness of his abuse at that time. Although Applicant did not use the term "habitual" to describe his drinking, he admits he lost control over his drinking ("I lost it, I didn't handle it well for a few years, and that's when I totally lost control." Tr. 62). Given the paucity of detail in the record about his consumption, it is difficult to apply AG ¶ 22(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").

Initial attempts to deal with his drinking problem by obtaining alcohol education at a local hospital (SOR ¶ 1.g) were not successful, as Applicant did not recognize he had a problem. After his brother died in 1989, Applicant voluntarily sought inpatient treatment in May and June 1990 (¶ 1.h). The rehabilitative success of that program is called into doubt by his subsequent DUI (SOR ¶ 1.d), but the record evidence does not confirm the alleged diagnosis of alcohol dependence (*see* AG ¶ 22(f) ("relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program")). Applicant's *pro se* response of "I ADMIT" to SOR ¶ 1.h does not prove the diagnosis, given he would confirm at his hearing only that he had been told he had "a problem," and he questioned who would have rendered a diagnosis of alcohol dependence (Tr. 74-75). While his primary care physician wrote in May 2007 that Applicant had required "inpatient treatment for his addiction" in the past (Ex. 3), it is not clear whether the physician was making a well-informed diagnosis, generalizing based on what Applicant told him about his past drinking, or simply repeating Applicant's untrained characterization of his problem. The medical records of Applicant's treatment were not made available for review, although Applicant's admitted lack of control and the alcohol-related incidents suggest an alcohol abuse problem at a minimum.

Applicant is credited with completing court-ordered alcohol education in 1991 (SOR ¶ 1.i), and admitting himself to a local hospital in 1992 (SOR ¶ 1.g) when he felt he was going to "go back into the gutter" (Tr. 78), although he testified that he simply was given a bed for a week. While he resumed drinking after eight months of abstention in about 1992, there have been no alcohol-related incidents away from, or at work, in the past 17 years. The Directive provides for mitigation if "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" (AG ¶ 23(a)). His hospital admission in 1992 when he was not actively abusing alcohol indicates some recognition of a problem and willingness to seek help when needed. AG ¶ 23(b) applies where "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)."

Yet there is credible evidence that Applicant has not always consumed alcohol responsibly since he resumed drinking in about 1992. When asked about his last episode of drinking to intoxication, Applicant responded, "I would say probably less than five years but then the drunk before that was probably about the same amount of

period." (Tr. 88). The government did not prove more recent intoxication. However, Applicant's primary care physician reported in May 2007 that Applicant had an odor of alcohol "on many occasions" when he came for an office visit (Ex. 3). The physician was not specific as to the dates of the office visits, but it is noted that Applicant has been under this physician's care only since August 2002. Any drinking by Applicant is against most of the therapeutic advice he has received (Tr. 80), including from his primary care physician (Ex. 3), and is contraindicated with his pain medication. Drinking before medical appointments and in preference to taking his pain medication raises considerable concerns about Applicant's judgment. Applicant's failure to abide by his promise to his primary care physician that he would abstain from alcohol creates doubt about whether he has the control over his drinking that he claims. Furthermore, doubts exist as to whether Applicant has been completely candid with the government about his drinking. His physician, who had no motive to misrepresent, reports that Applicant concealed his alcohol problem from him until May 2007. At his hearing, Applicant characterized as "ludicrous" the concerns his physician expressed about Applicant drinking before office visits (Tr. 90). Applicant has not met his burden of proving that his alcohol problem is safely in the past.

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 the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

> (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) 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's supervisor has detected no signs of alcohol about Applicant at work. Yet Applicant continues to drink against the advice of his physician even when the reasons that led him to drink heavily in the past apparently no longer exist (Tr. 52). His consumption reflects adversely on his judgment and presents an unacceptable risk of future abuse.

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:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant[2]
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ELIZABETH M. MATCHINSKI
Administrative Judge

[2]Treatment completed successfully is viewed favorably. Adverse findings are nonetheless returned as to ¶¶ 1.g, 1.h, and 1.i because of his continued irresponsible drinking.