

DATE: April 19, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-03860

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esq., Department Counsel

FOR APPLICANT

Thomas Albin, Esq.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated December 7, 2001, to the 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 the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on excessive alcohol consumption (guideline G) with alcohol-related incidents.

On December 14, 2001, Applicant, acting pro se, responded to the allegations set forth in the SOR and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on January 25, 2002. Pursuant to formal notice dated January 31, 2002, the hearing was scheduled for February 27, 2002. On February 23, 2002, Department Counsel requested a continuance of the hearing due to assigned Counsel's unavailability on February 27, 2002, due to a medical emergency. A brief continuance was granted, and on March 4, 2002, an amended notice was issued scheduling a hearing for March 13, 2002. At the hearing held as rescheduled, seven Government exhibits were entered into the record. Applicant tendered his own testimony and that of a personal friend. A transcript of the hearing was received in this office on March 21, 2002.

The record was held open following the hearing until March 27, 2002, for Applicant to submit updated treatment and law enforcement records. By facsimile on March 27, 2002, Applicant forwarded through legal counsel a handwritten summary from his alcohol counselor and documentation of a record search by the state police bureau of identification. Department Counsel filed a response on April 8, 2002, indicating the Government had no objection to the admission of the documents, which were then marked and entered as Applicant Exhibits A and B, respectively.

FINDINGS OF FACT

After a thorough review of the evidence, and on due consideration of the same, I render the following findings of fact:

Applicant is a 53-year-old mechanic, who was employed by the same defense contractor from May 1976 to October 1997 and from July 1999 to mid-January 2002. Recently terminated from his position due to his lack of a security clearance, Applicant is subject to recall should his security clearance be adjudicated favorably. Applicant, who had a company granted Confidential security clearance for most of his employ with the defense contractor, is applying for a Secret security clearance.

Applicant served on active duty in a branch of the United States military from April 1969 to November 1970. After Applicant was discharged from the service, he began a pattern of drinking alcohol three or four times per week in quantity of a six-pack of beer plus three or four shots, occasionally more. On most weekends throughout the 1970s and 1980s, Applicant consumed alcohol to intoxication.

In the mid-1990s, Applicant was arrested on three occasions after drinking alcohol. Circa September 1994, Applicant was involved in a dispute with a neighbor over the latter's dog who barked excessively. Extremely frustrated one day after the dog would not stop barking, Applicant kicked the dog, who was on town property at the time. A witness who observed the incident grabbed Applicant in a choke hold, and he threw her to the ground. The police were called and Applicant was arrested for breach of peace and assault. He was placed on probation for the incident. ⁽¹⁾ Applicant had been drinking alcohol before he went out and confronted the dog.

In March 1995, Applicant and his then live-in girlfriend had a verbal altercation after both had been drinking. As he attempted to sleep, she renewed the altercation by hitting him with a cigarette lighter. Applicant retaliated, striking his girlfriend in the mouth. Angry at him for splitting her lip, she called the police and had him arrested for disorderly conduct. When they appeared in court, it was suggested to both Applicant and this girlfriend that they stop drinking. They quickly reconciled and this girlfriend moved back into his home after only a three-day separation. Applicant was subsequently granted accelerated rehabilitation and ordered to complete six sessions of counseling.

After this alcohol-related domestic quarrel, Applicant moderated his drinking somewhat in that he stopped going to bars and reduced the frequency of his consumption. Over the next six years, he imbibed alcohol (a half pint of whiskey or vodka) at home while watching television at a frequency ranging from twice per week to once every couple of months. Occasionally, Applicant drank to intoxication.

In late May 1995, after he consumed a couple of shots of whiskey, Applicant drove his automobile around the monument of the local VFW. On entering the VFW of which he was a member, Applicant questioned the memberships of many of those present. He refused to leave the premises when asked to do so, and was arrested for creating a public disturbance. Applicant forfeited \$150 bond. ⁽²⁾

Pursuant to court-order for the March 1995 domestic incident, Applicant attended eight one-hour sessions from April 1996 to August 1996 with a certified addictions counselor (counselor X) for issues related to alcohol abuse and anger management. Applicant did not take the counseling seriously, as he did not think he had a problem with alcohol and he was resistant to treatment. Applicant came to one session under the influence of alcohol, having consumed "a few sips of whiskey" to deal with feelings of anxiety.

In October 1997, Applicant was laid off from his position as a mechanic with the defense contractor. Over the next year, Applicant was unemployed as he cared for his ailing mother who resided with him and his girlfriend. His unemployment and the extensive attention his mother required put a strain on his relationship with his girlfriend, and they broke up in 1999. Later in the year, he had to place his mother in a nursing home as he was recalled to work as a mechanic for the defense contractor.

In conjunction with his recall from layoff, Applicant at the request of the defense contractor completed a security clearance application (SF 86) in early May 1999. Applicant disclosed thereon a 1973 arrest for possession of marijuana as well as the September 1994 assault (which he mistakenly dated as July 1996) and the May 1995 creating public disturbance charges. Applicant responded affirmatively to inquiry regarding consultation with a mental health professional in the last seven years, and he listed treatment with counselor X from March 1996 to April 1996.

In July 1999, Applicant went back to work as a mechanic for the defense contractor. Interviewed by a Defense Security Service (DSS) special agent in November 1999, Applicant provided details of his arrests and of his court-ordered counseling with counselor X, which he indicated was in about 1994. He denied he was intoxicated on the occasion of his arrest at the VFW in 1995. With regard to the incident involving the dog, he related it occurred in about 1996.

Applicant had a second interview with the same DSS agent six days later where they discussed his drinking habits over the years. Applicant described himself as a binge drinker with a tendency to overindulge when he consumed alcohol:

I am a binge drinker and when I drink I know I am going to get drunk. This was something I did on most weekends when I was younger during the 1970s and 1980s. Over the past 10 years I have reduced my binge type of alcohol consumption to only about once or twice a year. Binge drinking is something I only do with whiskey or vodka, where I will drink about a pint over six to eight hours which will give me a pretty good buzz and I normally feel tired and sleep. I have lost interest in binge drinking and have too much to lose to do this more often. On those rare occasions when I binge drink, I do so at home and avoid driving or any public contact. Other than that I may consume a beer or two when I am working at home and it is hot, but that has no noticeable affect on me.

Admitting he had imbibed "a few sips of whiskey" prior to one of his sessions with counselor X, Applicant explained he found it stressful to open up to a stranger. He denied he was intoxicated on that occasion. With regard to any future drinking, Applicant told the agent he had no plan to increase his consumption and would probably reduce his binge drinking.

At the time of Applicant's interviews with the DSS agent, Applicant was continuing to consume on average a half pint of whiskey or vodka in his home in no set pattern. Periods of abstinence were followed by two days of drinking with no alcohol again for a couple of weeks. Applicant consumed alcohol to intoxication once per month to once every couple of months. Applicant coped with the death of his mother in mid-January 2001 by drinking to inebriation.

In June 2001, Applicant was reinterviewed by the DSS. As of the date of his interview, Applicant was consuming a half pint of vodka or whiskey at a frequency that varied from twice per week to once every two to three months.

Advised by the Government that it would work to his benefit to seek counseling, Applicant in August 2001 resumed treatment with counselor X to address issues related to alcohol dependence and relapse prevention.⁽³⁾ As of mid-November 2001, Applicant had attended six sessions with the counselor. With his sessions no longer covered by insurance, the frequency of his individual therapy was reduced to once per month thereafter. Applicant presented as less defensive and more responsive to feedback than he had on his earlier counseling in 1996. Cooperative in his sessions and motivated to make lifestyle changes, Applicant reduced his consumption of alcohol to an occasional shot or two of whiskey or vodka. Over a ten-day holiday break from the job in late 2001, Applicant imbibed alcohol on a couple of occasions. He also consumed a couple of light beers while at a Super Bowl party held at his nephew's home in early February 2002.

From October 2001 to January 2002, in addition to his sessions with counselor X, Applicant received individual psychotherapy and medication from a psychiatrist for treatment of symptoms of depression and anxiety. Applicant took prescribed Paxil and more recently Zoloft until March 2002 when his prescription for the latter ran out. Applicant does not have another appointment scheduled with the psychiatrist as he is without insurance.

As of March 2002, Applicant was continuing in his monthly sessions with counselor X to address alcohol dependency, anxiety and relapse prevention issues. Applicant had met with some success in incorporating clinical feedback into lifestyle changes. He had not managed to reach his goal of complete abstinence from alcohol and as of February 2002 was still experiencing the urge to drink. Applicant is confident that with counseling and a greater understanding of those triggers which lead him to drink, he will be successful in putting drinking behind him.⁽⁴⁾

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an

acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Alcohol Consumption

E2.A7.1.1. The Concern: Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

E2.A7.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A7.1.2.1. Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use

E2.A7.1.2.5. Habitual or binge consumption to the point of impaired judgment

E2.A7.1.3. Conditions that could mitigate security concerns include:

E2.A7.1.3.3. Positive changes in behavior supportive of sobriety

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the

side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to guideline G:

The Directive does not prohibit drinking per se. Rather, it is the excessive consumption of alcohol which raises security concerns, as abusive drinking often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure due to carelessness. Applicant had consumed alcohol before his arrests on disorderly conduct and/or assault charges in September 1994, March 1995 and May 1995. Applicant has not acknowledged he was intoxicated on any of the occasions. Yet, his judgment was clearly impaired by alcohol. His former girlfriend testified both she and Applicant had too much to drink before their altercation in March 1995. Not present when he drove around the monument on the lawn of the VFW later that Spring, she heard from others Applicant was intoxicated on that occasion. His claim that he was just "fooling around" on the lawn of the VFW is difficult to believe, given his age (46) at the time of the offense. His three alcohol-related offenses away from work are potentially security disqualifying (*See* E2.A7.1.2.1.). Furthermore, Applicant's pattern of binge drinking, to the point of intoxication on most weekends throughout the 1970s and 1980s and sporadically thereafter to as recently as 2001, falls within the security concerns addressed by disqualifying condition (DC) E2.A7.1.2.5. (habitual or binge consumption of alcohol to the point of impaired judgment).

Applicant considers himself to be an alcoholic and counselor X reports he is addressing issues of "alcohol dependence and relapse prevention" in his sessions with her. While this suggests that in the counselor's opinion Applicant has a dependency problem,⁽⁵⁾ there is no clear diagnosis or evaluation of alcohol abuse or dependence by a mental health or medical professional considered by the Department of Defense to be qualified to render such a diagnosis.⁽⁶⁾ According to the limited information of record, counselor X is a nationally certified master addictions counselor to whom Applicant was referred by the local criminal justice system. Notwithstanding her apparent experience and interest in addictions treatment, there is no indication she is a licensed clinical social worker affiliated with an alcohol treatment program. Although the psychiatrist who treated Applicant for anxiety and depression is a credentialed medical professional, his assessment is not of record. Neither DC E2.A7.1.2.3. (diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence) nor DC E2.A7.1.2.4. (evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program) can properly be considered in this case.

In the absence of a diagnosis of alcohol abuse or dependence by a credentialed medical professional or by a licensed clinical social worker on staff of a recognized alcohol treatment program, Applicant is not required to meet the stringent requirements of mitigating condition (MC) E2.A7.1.3.4. in order to prove reform.⁽⁷⁾ Yet, in light of his drinking history, Applicant bears a heavy burden to demonstrate he is not likely to abuse alcohol in the future. Although Applicant was no longer drinking to intoxication on most weekends, he continued after his court-mandated treatment in 1996 to overindulge in alcohol when he drank. When interviewed by the DSS special agent in November 1999, Applicant reported a pattern of drinking a half pint of vodka or whiskey once every two weeks to once every couple of months. While he claimed at that interview that his binge drinking was limited to once or twice per year, he also stated, "when I drink I know I am going to get drunk." Applicant's pattern of consumption did not change appreciably during the 2000/01 time frame. As of June 2001, he was imbibing a half pint of whiskey or vodka on average three times per month. In discussing his consumption over the last three years, Applicant admitted at the hearing to drinking to intoxication when under stress, "on occasions, once a month or so, once every couple of months."⁽⁸⁾

To Applicant's credit, he resumed his sessions with counselor X in August 2001. In contrast to his initial therapy in 1996, Applicant has shown himself motivated to make lifestyle changes, open to feedback, and responsible in his conduct. At the referral of counselor X, Applicant over the Fall of 2001 was treated by a psychiatrist for medication management of symptoms of anxiety and depression. Although Applicant had not achieved his goal of total abstinence, he was managing to remain sober, consuming no more than two shots of liquor on two occasions over the holidays in

December 2001 and two light beers at a Super Bowl party in February 2002. His recent moderation of his drinking is regarded as supportive of sobriety. While positive changes in behavior may be mitigating of excessive alcohol consumption (*See* E2.A7.1.3.3.), the changes must be evaluated in light of the seriousness and extent of the alcohol abuse. After several months of recent individual psychotherapy with counselor X, Applicant has yet to develop a viable alternative to alcohol to help him cope with stress and anxiety ("sometimes things will get on my mind that bother me, and the only way I can find any kind of solace or release is to have a few drinks." Transcript p. 34). Counselor X regards Applicant as capable of performing his defense-related duties without compromising security. Yet, her favorable prognosis is with an understanding that Applicant is continuing in treatment with the psychiatrist and compliant with his medication. Applicant testified at the hearing he was not presently taking Zoloft as his prescription had run out as of early March 2002 and he had not seen the psychiatrist in three months. In response to whether he had an appointment to see the psychiatrist, Applicant indicated he could call him. Lacking any insurance since he had been terminated from his employ, Applicant had made no effort to contact the psychiatrist, even though the physician had told him not to worry about the cost, since he might be able to give him pharmaceutical samples. The risk of future alcohol abuse is increased where Applicant is not taking any medications which could alleviate his anxiety and depression. Applicant does not have a support network at home which could help him deal with his continuing urges to drink. Applicant having failed to demonstrate that he can cope for a sustained period with life's difficulties without resorting to alcohol, it is premature to conclude with the requisite degree of confidence that his abusive use of alcohol is safely of the past. Subparagraphs 1.a. through 1.f. are resolved against him. Regarding subparagraph 1.e., treatment itself is viewed favorably, but Applicant's consumption of alcohol prior to a counseling session is indicative of his improper use of alcohol to cope. An adverse finding is warranted as to subparagraph 1.f., as Applicant continued to consume alcohol in the same pattern he had been drinking, which was at times abusive, until at least late August 2001. Subparagraph 1.g. is resolved in his favor as his efforts to seek treatment are viewed positively.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline G: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: For 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.

Elizabeth M. Matchinski

Administrative Judge

1. Applicant testified to his recollection the incident occurred in about 1996. However, he also acknowledged the incident could have been in 1994. A counseling record dated in April 1996 indicates the March 1995 disorderly conduct charge for which Applicant had been ordered into counseling was his second arrest, as he had been arrested about

eighteen months before for assault. (See Ex. 5). Moreover, an FBI record check disclosed an offense of September 1994 for assault and breach of peace, which is consistent with the entry in the counseling record. (See Ex. 7). It is likely the incident involving the dog was in 1994. A recent state police identification check disclosed no record (Ex. B), but it may well be that the records of the incident have been expunged.

2. Applicant's former girlfriend, with whom he was living at the time of the incident, testified that she was not present at the incident but heard from others that Applicant was intoxicated. (Transcript p. 90).

3. As for his motivation in resuming his counseling, Applicant testified on direct he renewed his sessions with her after he received a statement from the Government indicating it would be to his benefit to pursue counseling. (Transcript p. 41). On cross examination, he indicated he went back because he is "an alcoholic." (Transcript p. 67).

4. Asked on direct examination whether he had a target date in mind for achieving total abstinence, Applicant responded, "The day I can look at it and say I don't want it. That is my target day. I do have it in mind, it is like quitting smoking. There will be a day come that I will just stop. I feel I'm very close to that." (Transcript p. 43).

5. In August 1996, the counselor indicated Applicant was undergoing individual psychotherapy for issues related to alcohol abuse and anger management. There is no evidence she has ever rendered a formal diagnosis.

6. Under E2.A7.1.2.3., a diagnosis of alcohol abuse or alcohol dependence is potentially security disqualifying if the diagnosis is rendered by a credentialed medical professional, defined in the Directive as physician, clinical psychologist or psychiatrist. Under E2.A7.1.2.4. an evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker raises similar concerns. The licensed clinical social worker must be a staff member of a recognized treatment program.

7. Pursuant to E2.A7.1.3.4., following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

8. Asked further on direct about his drinking to intoxication, Applicant responded he did not drink to complete intoxication, but he would drink until he had enough that he realized he should put the bottle down. (Transcript p. 34). He had already admitted to overindulging, to getting "drunk" when he drinks.