

DATE: January 7, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-04371

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

William S. Fields, Esq., Department Counsel

FOR APPLICANT

Pro Se

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 August 3, 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 a diagnosis of alcohol abuse and drunk driving incidents, and on personal conduct (guideline E) related to deliberate falsification of a September 1999 security clearance application and of a November 2000 subject interview.

On August 22, 2001, Applicant responded to the allegations set forth in the SOR and requested that his case be determined on the written record in lieu of a hearing. The Government submitted its File of Relevant Material on September 6, 2001, a copy of which was forwarded to Applicant by letter dated September 7, 2001, with instructions to submit additional information and/or any objections within thirty days of receipt. Applicant elected not to file a response by the October 20, 2001 due date, and on October 30, 2001, the case was assigned to me for a decision.

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 32-year-old security officer (guard) with a history of illicit substance abuse and excessive alcohol consumption. He has been employed by a defense contractor since September 1999 and seeks a security clearance for his present duties.

Circa 1984, when he was fifteen years of age, Applicant began to smoke marijuana and to consume alcohol. Even though the marijuana caused some paranoia, he continued to ingest the drug about once per month until his last use in

1996. A weekend drinker while in high school, Applicant imbibed alcohol to intoxication almost every weekend until the early 1990's.

In about 1988, Applicant was introduced to hallucinogens (LSD) and cocaine. On occasion over the next three years, Applicant ingested LSD in tablet form and snorted cocaine on average once per month while continuing to consume alcohol to intoxication on most weekends.

While operating his motor vehicle after consuming approximately eight beers on an occasion in mid-June 1989, Applicant hit two unoccupied cars which were parked on the side of the road. He left the scene of the accident and called the police. Cited for one-way violation, speeding, operating a motor vehicle negligently so as to endanger, and leaving the scene of an accident with property damage, Applicant pleaded not guilty in court to the charges. Sufficient facts were found as to all the counts, but the leaving the scene charge was dismissed. Applicant was fined \$50.00 each for the one-way and speeding violations, and \$265.00 for operating a motor vehicle negligently so as to endanger.

In the early 1990's, Applicant started to drink alcohol daily, usually in quantity of six to ten beers. After imbibing seven beers over a three-hour time span at a social gathering in April 1991, Applicant was stopped by the police for a defective taillight. After he failed field sobriety tests, Applicant was arrested for operating a motor vehicle under the influence of liquor (OUIL). Charged with OUIL, operating a motor vehicle with defective equipment, and operating a vehicle without a valid inspection sticker, Applicant pleaded guilty to the charges in court. The motor vehicle violations were filed and he was sentenced on the OUIL to one year supervised probation and \$40.00 costs. Applicant completed a first offender driving under the influence (DUI) program while he was on probation.

Applicant reduced his consumption of alcohol over the September 1992 to December 1992 time frame. Circa November 1992, he began to use heroin once every two to three weeks while continuing monthly use of cocaine and occasional use of marijuana. In early December 1992, Applicant ingested some benzodiazepines (Klonopin and Xanax) which he purchased on the street. As he became more involved in illegal drugs, his use of alcohol increased to three to four beers and four to five drinks of hard liquor on a daily basis. Over a two-week period in late February/early March 1993, Applicant and a friend spent about \$2,000.00 on cocaine, which they shared.

Fearing that his cocaine use was out of control, Applicant admitted himself for inpatient detoxification to a local hospital in March 1993. On admission, he reported a drinking pattern of eight to twelve beers and approximately a half to a pint of whiskey per day with a history of alcohol-related blackouts. A breathalyzer test administered to him registered .154 % blood alcohol content. Diagnosed as suffering from mixed substance abuse (alcohol, cocaine, benzodiazepines), Applicant underwent a treatment regimen of Alcoholics Anonymous (AA) meetings and individual and milieu therapy. At discharge one week later, medical diagnoses were alcohol withdrawal syndrome and mixed substance abuse. Recommended aftercare consisted of daily AA meetings and sessions in the hospital's outpatient clinic.

Abstinent for approximately two months after his discharge, Applicant resumed daily use of alcohol, monthly use of cocaine and heroin, approximately monthly use of marijuana and frequent use of benzodiazepines (primarily Klonopin which he obtained from a friend for whom it was legally prescribed).

In mid-August 1996, local police observed Applicant and a companion parked in the vicinity of a possible breaking and entering in progress. On approach to the vehicle, the police saw Applicant place something in the car's console and observed an open beer can in the passenger's lap. On noting several more full and one empty beer can in the back seat of the car, the police then retrieved a half-full beer can from the console. Applicant and his companion were both cited for being in violation of the city's open container law, and his companion with underage possession. Applicant was assessed \$50.00 in costs and the charge was subsequently dismissed on payment.

After ingesting Klonopin which he obtained from a friend and drinking eight beers on an occasion in late September 1996, Applicant hit a parked car with his vehicle. On hearing the crash, an off-duty police officer called in a report of an accident and proceeded to the scene where he observed Applicant accelerate his vehicle through a stop sign. With Applicant known to the officer, the off-duty policeman proceeded to Applicant's residence where he observed signs of alcohol about Applicant's person (unsteady on feet, slurred speech, odor of alcohol). Following field sobriety tests, Applicant was placed under arrest by an officer on duty for OUIL, operating under the influence of drugs, and leaving

the scene after property damage. Applicant told the officer at the time that he needed help for his substance abuse (alcohol and heroin) problems. In court, Applicant pleaded guilty to the OUIL and leaving the scene charges. Adjudged guilty in December 1996 of these charges, he was sentenced on the OUIL to six months in the house of correction (suspended), to complete a fourteen-day driving under the influence of liquor (DUIL) inpatient program, to two years supervised probation and to two years loss of license. For the leaving the scene charge, he was sentenced to six months in the house of correction, to run concurrent with the term for the OUIL. Although he had used Klonopin which had not been prescribed for him, Applicant pleaded not guilty to operating under the influence of drugs. That charge was dismissed on payment of \$135.00.

Applicant continued to use Klonopin, at times on an every other day basis, to December 11, 1996,⁽¹⁾ and alcohol, for the most part daily, to January 26, 1997. Sometime in late 1996/early 1997, Applicant resolved to abstain from any illegal drug abuse or misuse of prescription drugs in the future. He did not view his alcohol use as posing a similar problem, and after drinking three beers "to try and get [his] fill," Applicant entered on January 26, 1997, an inpatient county DUIL program for second offenders as required by the court. Applicant was assessed as exhibiting symptoms of alcohol dependence based on a MAST score of 52 and the DSM-IV (Diagnostic and Statistical Manual for Mental Disorders, 4th Ed.) criteria for alcohol dependence.⁽²⁾ Applicant's attitude during the program was selectively compliant. With Applicant reluctant to offer any input even when induced to do so by staff or peers, his participation in verbal group was deemed minimal and in his individual sessions low. At discharge on February 8, 1997, Applicant's overall participation was assessed as low and his prognosis not favorable. Without any plan for changes in his lifestyle, he was determined to be at high risk for recidivism. Applicant attended recommended aftercare, consisting of group sessions for twenty-five weeks at a center for addictive behaviors.

Following his inpatient hospitalization and group therapy, Applicant maintained a drug and alcohol-free lifestyle until sometime in 1998 when he resumed alcohol consumption on weekends as he felt he could control his drinking.

In conjunction with his employer's request that he be granted a security clearance for his duties, Applicant on September 22, 1999, executed a security clearance application (SF 86) on which he responded negatively to inquiries concerning whether he had ever been arrested for any offense related to alcohol or drugs (question 24), whether his use of alcohol in the last seven years had resulted in any alcohol-related treatment or counseling (question 30), and whether he had illegally used any controlled substance in the last seven years (question 27). Applicant deliberately concealed his alcohol-related arrests and treatment as well as his illegal drug involvement, including his abuse of prescription benzodiazepines, from the Department of Defense.⁽³⁾

On November 8, 2000, Applicant was interviewed by a special agent of the Defense Security Service (DSS). Nervous and embarrassed about his illegal use of controlled dangerous substances as well as of prescription drugs not prescribed for him, Applicant falsely denied any use of illegal drugs, including any abuse of prescription drugs, as he knew such drug use was not accepted.

On November 22, 2000, Applicant was reinterviewed by the DSS. Applicant admitted to having been twice convicted of drunk driving, and to having undergone court-ordered treatment as a result. Applicant detailed his use of alcohol, including his resumption in 1998, with current use at that time of six to ten beers per sitting on weekends. He related an intent to continue to consume alcohol at that level or less in the future as he believed his drinking was in control. Applicant admitted having lied on his SF 86 and during his initial subject interview about his illegal drug use and use of prescription drugs not prescribed for him. He attributed his lack of candor to nervousness and embarrassment, claiming that he was trying to put his drug use behind him. Asked why he also did not disclose his alcohol-related arrests or treatment on his SF 86, Applicant denied any intentional omission, speculating he "probably went through the questions too quickly and mistakenly overlooked some areas."

Applicant continued to consume alcohol through at least March 2001. Circa April 2001, he began to attend AA meetings. As of August 22, 2001, he had abstained from alcohol for five months.

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, I find the following adjudicative guidelines to be most pertinent to this case:

GUIDELINE G

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.A7.1.2.3. Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence

E2.A7.1.2.5. Habitual or binge consumption of alcohol 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

GUIDELINE E

Personal Conduct

E2.A5.1.1. The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

E2.A5.1.2. Conditions that could raise a security concern and may be disqualifying also include:

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an

investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination.

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

* * *

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, I conclude the following with respect to guidelines G and E:

Applicant has a significant history of involvement with mood-altering substances, alcohol as well as a variety of illegal drugs and benzodiazepines. After consuming approximately eight beers on an occasion in mid-June 1989, Applicant hit two parked cars with his vehicle. Although he was not charged with drunk driving, he was fined for operating a motor vehicle negligently so as to endanger. Following this incident, Applicant's alcohol consumption increased to six to ten beers daily and in April 1991, he was arrested for his first OUIL offense. While he managed to reduce his alcohol consumption in the Fall of 1992, his drug abuse became more extensive. He started using heroin and prescription benzodiazepines which had not been prescribed for him, and over a two-week period in late February/early March 1993, he shared \$2,000.00 worth of cocaine with a friend.

Fearing that his cocaine use was out of control, Applicant admitted himself for detoxification to a local hospital, where he was treated for one week in March 1993 for a condition diagnosed by a physician as mixed substance abuse (alcohol, cocaine, benzodiazepines). While he managed to remain abstinent from mood-altering substances for approximately two months thereafter, he relapsed into daily alcohol abuse, monthly cocaine and heroin use, approximately monthly use of marijuana, and frequent use of prescription benzodiazepines. Cited for an open container violation in August 1996, Applicant the following month was arrested for his second OUIL and driving under the influence of drugs (Klonopin) after he hit a parked car while impaired by alcohol and drugs. Although he resolved at that time to give up illegal drugs, he continued to abuse prescription benzodiazepines to December 1996 and to consume alcohol to the date of his

admission into a court-mandated county DUI program in January 1997.

Assessed as exhibiting symptoms of alcohol dependence, Applicant was only a marginal participant in the county DUI program, and at discharge he was given an unfavorable prognosis with the risk of recidivism high. Abstinent throughout the twenty-five-week aftercare program and for sometime thereafter, Applicant in 1988 resumed drinking on weekends, as he felt he could control his drinking. As of November 2000, he was imbibing in substantial quantity of six to ten beers in a sitting. On review of the adjudicative guidelines pertinent to alcohol consumption, disqualifying conditions E2.A7.1.2.1. (alcohol related incidents away from work), E2.A7.1.2.3. (diagnosis by a credentialed medical profession of alcohol abuse), ⁽⁴⁾

and E2.A7.1.2.5. (habitual or binge consumption to the point of impaired judgment) are applicable in this case.

When he responded to the SOR on August 22, 2001, Applicant denied any current consumption of alcohol, claiming abstinence while attending AA for the last five months. While this recent period of abstinence is a positive change in behavior supportive of sobriety (MC E2.A7.1.3.3.), the magnitude of Applicant's alcohol problem warrants more in mitigation. Since Applicant has been diagnosed by a physician as suffering from alcohol abuse, he is subject to E2.A7.1.3.4., which requires for mitigation successful completion of inpatient or outpatient rehabilitation along with aftercare requirements, frequent participation in meetings of Alcoholics Anonymous or similar organization, abstinence from alcohol for a period of at least 12 months, and a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program. Although Applicant completed the county's DUI program, the quality of his participation was marginal. He was given an unfavorable prognosis, which was borne out by Applicant's relapse into drinking in excessive amounts. Applicant's recent affiliation with AA is viewed favorably, but there is no evidence as to the extent of his commitment to the program. At this juncture, it is premature to conclude that his alcohol abuse is safely of the past. Applicant was abstinent from alcohol from mid-January 1997 to sometime in 1998 in the past only to relapse into drinking in excessive quantities. Accordingly, subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., and 1.f. are resolved against him. Subparagraph 1.g. is concluded in his favor as there is no evidence Applicant was continuing to drink as of early August 2001.

The Government's case under guideline E, personal conduct, is based on Applicant's lack of candor on his September 22, 1999 SF 86 and during his initial interview with a DSS special agent on November 8, 2000. Applicant does not dispute that he falsified his security clearance application by denying any illegal drug involvement within seven years of the application. His denial of any deliberate omission of his alcohol-related offenses and treatment was rejected as not worthy of belief, given the unambiguous nature of the inquiries and the relative recency of his last OUIL and court-mandated participation in the county DUI program. The deliberate omission, concealment or falsification of relevant and material facts from any personnel security questionnaire is potentially security disqualifying (See DC E2.A5.1.2.2. under personal conduct), as it could indicate that the individual may not properly safeguard classified information. Given the opportunity to correct the falsifications when he was interviewed on November 8, 2000, Applicant falsely denied any use of illegal drugs or use of prescription drugs not prescribed for him. Although Applicant ceased his drug abuse in late 1996, it remains relevant and material to a determination of his security worthiness. His efforts to conceal his drug abuse during his subject interview fall within DC E2.A5.1.2.3. (deliberately providing false or misleading information concerning relevant and material matters to an investigator . . . in connection with a personnel security or trustworthiness determination).

To Applicant's credit, he detailed his alcohol and drug abuse when he was reinterviewed by a DSS agent on November 22, 2000. The DOHA Appeal Board reaffirmed in ISCR 01-06166 (decided on October 25, 2001), that where a case involves disclosures by an applicant that are corrections of an earlier falsification, MC E2.A5.1.3.3. (individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts) rather than MC E2.A5.1.3.2. (falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily) is proper for consideration. Assuming Applicant disclosed his alcohol arrests and treatment during his initial DSS interview on November 8, 2000, this correction came more than a year after the SF 86 misrepresentations, so it cannot reasonably be viewed as prompt. Furthermore, his initial effort at rectification was only partial, as he elected in this face-to-face interview with the agent to conceal his substantial past drug involvement. While he detailed his use of heroin, LSD, marijuana and cocaine, when he was reinterviewed two weeks later, it is not at all clear that he volunteered the information up-front, before being confronted. Moreover, the lack of any credible

explanation from Applicant on November 22, 2000, as to the reason for the omissions of his drunk driving offenses and alcohol-related treatment from his SF 86, only serves to compound the doubts for his security worthiness engendered by his repeated false statements. The Government can ill afford having individuals decide for themselves the timing and extent of disclosure. Subparagraphs 2.a., 2.b., 2.c., 2.d. and 2.e. are resolved against Applicant.

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

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Subparagraph 2.d.: Against the Applicant

Subparagraph 2.e.: 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.

Elizabeth M. Matchinski

Administrative Judge

1. When interviewed by a Defense Security Service (DSS) special agent on November 22, 2000, Applicant admitted to use of Klonopin (frequency not disclosed) from 1993 to the date of his arrest and to Xanax only on a few occasions from 1993 to 1996. (See Item 5). The records of the county DUIL program indicate a reported use of Xanax/Klonopin not prescribed for him "every other day until about 12-11-96." (See Item 6). Confronted during his November 22, 2000 interview with this report of use in December 1996, Applicant denied it was valid, and claimed no use of any illegal drug or prescription drug since his arrest. Treatment personnel having no apparent motive to report other than what Applicant told them, Applicant is found to have engaged in the frequent use of Klonopin to December 11, 1996, which was the date of the court proceedings for the September 1996 OUIL and drug charges.

2. The qualifications of the staff member who rendered this assessment are not clear.

3. Applicant told a DSS special agent on November 22, 2000, that he did not intentionally omit his alcohol-related arrests or treatment from his SF 86. Given the relative recency of his last OUIL and treatment at the time he completed the questionnaire, and the fact that he responded negatively to every question on the privacy section of the form, his denial of any intentional falsification is not believable.

4. That factor is applicable because Applicant was diagnosed as suffering from mixed substance abuse (including alcohol) by a physician on the staff of the hospital where he was treated in March 1993. While the staff at the county DUI program in January 1997 assessed Applicant as "exhibiting symptoms of alcohol dependence," there is no evidence that the assessment was rendered or adopted by a credentialed medical professional (physician, clinical psychologist, or psychiatrist) or by a licensed clinical social worker.