DATE: December 31, 2001

In Re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 01-05737

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, 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 and the implementation of Title 10, Section 986 of the United States Code), 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: 1) excessive alcohol consumption (guideline G) as manifested by three drunk driving incidents between 1991and 1995 and treatment for alcohol abuse in 1993 and 1996; and 2) criminal conduct (guideline J) because of the operating under the influence of liquor offenses. Applicant's conviction of operating under the influence of liquor (third offense) in December 1995, for which he was sentenced in June 1996 to two years confinement (nine months to be served in a halfway house with the remainder suspended) was alleged to disqualify him from having a security clearance granted or renewed pursuant to Title 10, Section 986 of the United States Code.[(1)]

On August 31, 2001, Applicant, acting pro se, responded to the allegations set forth in the SOR and requested a hearing before a DOHA Administrative Judge.[(2)] The case was assigned to me on October 2, 2001. Pursuant to formal notice dated October 5, 2001, the hearing was scheduled for October 12, 2001, Applicant having waived the fifteen-day notice requirement. At the hearing, which was held as scheduled, the Government submitted twelve exhibits and the Applicant eight exhibits, all of which were entered into the record. Testimony was taken from the Applicant. With the receipt of the transcript in this office on October 26, 2001, the case is ripe 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 29-year-old mechanical engineer who has worked for his current employer, a large defense contractor, since May 1999. He seeks a Secret clearance for his defense-related duties.

Applicant started consuming alcohol when he was about sixteen years of age (circa 1988).

Over the next two years, his drinking pattern consisted of two beers per month with friends on the weekends with a gradual increase to two or three beers weekly in social circumstances. After Applicant commenced his studies at a local university in the fall of 1990, his drinking averaged two beers plus two or three mixed drinks two to three times weekly in social situations. During holidays or in post exam celebrations, Applicant imbibed as much as six to eight beers or four or five mixed drinks. Throughout his college career, Applicant drank in sufficient quantity to cause him to become intoxicated on a weekly to monthly basis.

In December 1991, Applicant attended a Christmas party where he consumed two or three beers in a relatively short period of time. While en route home, he was pulled over by the police for not using his turn signal. Told to go home, Applicant became flustered because he had been drinking underage and he pulled over in a nearby lot. Questioned by another officer as to what he was doing there, Applicant admitted he had imbibed a couple of beers earlier that day. He was then administered field sobriety tests, which he failed. Taken into protective custody, Applicant submitted to breathalyser testing at the station, which registered .16% blood alcohol content. Applicant was released to the custody of a friend on the condition he not return to his car and attempt to drive. Applicant was subsequently arrested for operating under the influence (OUIL)--alcohol after he was observed operating his vehicle on a public way. He was transported to the station where he submitted to breathalyser testing which registered alcohol blood levels of .13%, .14% and .12%. In court, his case was continued without a finding. Applicant was placed on one year unsupervised probation, ordered to attend an alcohol education program, and fined.

For twenty weeks in 1992, Applicant attended the court-mandated alcohol education program, which consisted of three-hour sessions once per week and one Alcoholics Anonymous (AA) meeting. The program was general in nature and no recommendations were made for further individualized treatment.

In September 1992, Applicant consumed a "substantial" quantity of beer and hard liquor at a party. He returned home to find an invitation from friends to join them. While driving to meet them, Applicant was involved in a traffic accident with another motor vehicle. Responding state police detected signs of alcohol use by Applicant (alcohol on breath, glassy eyes, slurred speech, swaying gait). Complaining of an injury caused by him striking the windshield of his car in the accident, Applicant was transported to the hospital where several samples of his blood were taken from him. With his blood alcohol level testing at .21%, Applicant was placed under arrest for OUIL and transported to a state police facility where he submitted to breathalyser testing with results .17/.15/.16 percent blood alcohol content. Charged in court with OUIL (2nd offense) and marked lanes violation, Applicant pleaded not guilty to both charges. Applicant was found guilty of OUIL (2nd offense) and sentenced to ninety days in the house of correction (suspended), placed on supervised probation for two years, ordered to attend a fourteen-day inpatient program, and he lost his license for one year. On the marked lanes violation, sufficient facts were found, but the charge was filed. Applicant admits he was impaired on the occasion of his arrest, although his recollection is that the other car swerved into him. In early December 1992, he was adjudged to be in violation of the probationary term imposed for his first drunk driving offense and he was fined $180.00.

Pursuant to court order, Applicant was evaluated in early December 1992 in a county driving under the influence of liquor (DUIL) program. Six weeks later, he was admitted into their fourteen-day residential treatment program for second offenders, where he was assessed as exhibiting symptoms of mild alcohol dependence based on a MAST score of 14, an increase in his drinking pattern over time, blackouts, failed attempts to control drinking, two DUIs with blood alcohol content of .16% and .21%, and family and social problems related to drinking. At the time of his admission, Applicant reported a drinking pattern of six beers once per week. Applicant exhibited a positive attitude with average participation during the program, which consisted of individual and group counseling, lectures, AA meetings, discussion groups and milieu therapy. At discharge, Applicant was assessed to be at risk for recidivism if he did not maintain complete abstinence, and aftercare treatment was recommended.

With college friends still extending invitations to drink, and of the opinion he could control his drinking since he did not

crave alcohol, Applicant resumed alcohol consumption shortly after his discharge from the inpatient setting. He continued to drink while attending aftercare, which consisted of a forty-hour driver alcohol education program. For the duration of the program, he went to two or three AA meetings per week. At his discharge from the aftercare program in late July 1993, Applicant was advised to continue with AA. Applicant did not follow that recommendation as he felt he could control his consumption without it.

In June 1995, Applicant earned his bachelor of science degree. Following his graduation, he continued to imbibe on average four or five beers on three to four nights per week. Occasionally, he consumed mixed drinks such as vodka. Applicant became intoxicated at times after drinking at parties and holiday celebrations.

In September 1995, Applicant went to work as a test technician for company A in addition to continuing to work on occasion as a cook at a family pizza eatery which had employed him since 1990. By December 1995, Applicant was going out drinking two to three times per week, consuming on any given night four to five beers.

After consuming "several" drinks at a bar in December 1995,[(3)] Applicant was pulled over en route home after he almost struck a police officer on routine patrol. Detecting a strong odor of alcohol on Applicant, the officer administered field sobriety tests which Applicant failed and he was arrested for OUIL Charged with OUIL (3rd offense), Applicant entered a not guilty plea in December 1995 and he was ordered to attend three AA meetings per week. Following a jury trial, he was found guilty of the charge in June 1996, and sentenced to two years in the house of correction, nine months to serve at a halfway house, balance suspended; to two years supervised probation to mid-June 1998; and to eight years loss of license.

After spending two or three days each at two correctional houses, Applicant became a resident of an alternative center where he received inpatient treatment for alcohol abuse consisting of AA, group therapy and substance abuse education.[(4)] Applicant's attitude was average, his participation above average. In mid-October 1996, Applicant was released from the center to his home in an electronic monitoring program on the condition he attend frequent AA meetings or other support group such as Rational Recovery. Applicant elected not to attend any support group, planning to turn to family members if needed. On his parole from the electronic monitoring program, Applicant found work as a mechanical engineer in February 1997 for company B.

Following his December 1995 arrest, Applicant stopped drinking until sometime in about 1997.[(5)] On an undisclosed date, Applicant decided he could handle beer in moderation, so he resumed consumption of intoxicants. In June 1997, Applicant got married. On his honeymoon, Applicant consumed as much as four or five beers in a sitting. In December 1997, Applicant and his spouse had a son.

Applicant sought reinstatement of his operator's license so that he could drive to and from work. He was advised to return in six months. In mid-June 1998, he was released his probation for the December 1995 OUIL. In July 1998, Applicant's driver's license was reinstated on a restricted basis, allowing him to operate a motor vehicle between the hours of 6:00 a.m. and 6:00 p.m.

As of December 1999, he was drinking alcohol at a rate of two beers per month. By at least late September/early October 2001, he was imbibing at a rate of two or three beers per week, consuming that amount on occasion in one sitting.[(6)] At times, Applicant drank alcohol with coworkers at lunch or after work, but in quantity of no more than one beer.

In August 2000, Applicant and his spouse purchased their residence with monies saved up. On his relocation to a home farther from his workplace, Applicant petitioned for a modification of his restricted driving privileges to extend the hours. In early October 2000, Applicant was issued a restricted license authorizing his operation of a motor vehicle between the hours of 5:00 a.m. and 7:00 p.m. so that he could drive to work.

Applicant did not allow his alcohol consumption to adversely affect his work. He proved to be a dependable and conscientious worker for company B, and received an overall rating of very good for his performance from September 1997 to September 1998. In early May 1999, Applicant commenced work for his current employer (company C). A mechanical engineer responsible for the design of complex military electronic hardware on multiple programs,

Applicant has been extremely energetic and focused at all times on his job. Considered a valuable member of his section, Applicant merited a 5.49% increase in pay to an annual salary of $59,904.00 as of mid-May 2001. His overall performance was rated as "exceeds requirements" as of late September 2001.

Applicant intends to continue to consume alcohol in the future, albeit only in moderation as he wants to avoid any further legal problems. While he acknowledges exercising "poor, very, very poor judgment" in abusing alcohol in the past, he feels he can control his consumption of alcohol. Since June 1996, Applicant has changed his social friendships and activities. He no longer goes out with the persons with whom he drank in the past.

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

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.

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. . .

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

Conditions that could mitigate security concerns include:

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

GUIDELINE J

Criminal Conduct

The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Conditions that could raise a security concern and may be disqualifying include:

a. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged.

b. A single serious crime or multiple lesser offenses

c. Conviction in a Federal or State court, including a court-marital of a crime and sentenced to imprisonment for a term exceeding one year[(7)]

Conditions that could mitigate security concerns include:

a. The criminal behavior was not recent

g. Potentially disqualifying conditions c. and d., above, may not be mitigated unless, where meritorious circumstances exist, the Secretary of Defense or the Secretary of the Military Department concerned has granted a waiver.

* * *

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 J:

Applicant has a history of abusive consumption of alcohol during his teens and into his mid-twenties, including three drunk driving offenses in a four-year time frame. Arrested for the first time at age 19, Applicant testified he consumed only two beers on that occasion. The results of the first breathalyser at .16% blood alcohol content confirm he was legally intoxicated. Given a break by the police and released to the custody of a friend, Applicant in an exercise of extremely poor judgment attempted to drive his automobile. The police were waiting for him and he was arrested for drunk driving, for which he was placed on one year unsupervised probation and required to attend an alcohol education program. In September 1992, he drove home after drinking a "substantial" quantity of beer and hard liquor at a party. Fortunate to have made it home safely, Applicant in another exercise of very questionable judgment succumbed to the invitation of a friend and proceeded to drive his car while significantly impaired by alcohol. He was involved in an accident which he claims was caused by the other operator swerving into him. Samples of his blood taken at the hospital after his automobile accident reflect a .21% blood alcohol content. Adjudged guilty of his second OUIL, Applicant was

sentenced to ninety days, suspended, and he was ordered to attend an inpatient treatment program for fourteen days. In this residential program, Applicant was assessed as exhibiting symptoms of alcohol dependence (mild). At discharge, he was determined to be at risk of recidivism if he did not maintain complete abstinence. This fourteen-day inpatient program and subsequent forty-hours of aftercare had little impact on changing Applicant's drinking habits. Until his graduation from college in June 1995, he continued to imbibe two beers plus two or three mixed drinks twice to three times per week, with occasional consumption of as much as six to eight beers or four or five mixed drinks in a sitting. His drinking habits moderated little thereafter, and in December 1995, he committed his third OUIL, which was punished by a term of two years imprisonment (all but nine months suspended, with the term imposed to be served in a halfway house), two years of supervised probation, and mandatory treatment for alcohol abuse. Under the adjudicative guideline pertinent to alcohol consumption, disqualifying conditions E2.A7.1.2.1. (alcohol-related incidents away from work) and E2.A7.1.2.5. (habitual or binge consumption of alcohol to the point of impaired judgment) are clearly pertinent to an evaluation of Applicant's current security suitability.

While the discharge record of the county DUIL fourteen-day program reflects Applicant was assessed in January 1993 as exhibiting symptoms of alcohol dependence, there is insufficient information in the record to apply disqualifying conditions E2.A7.1.2.3. (diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence) or 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). The qualifications of the staff member in the DUIL program who made the assessment are not clearly established in the record. The discharge record itself bears only the typewritten name of Applicant's counselor. Her particular experience and qualifications are not apparent. While other documents in Applicant's treatment record, including confirmation to the court of Applicant's completion of the program, bear the signature of the director of clinical services, it is not obvious that this licensed clinical social worker rendered or adopted the assessment of alcohol dependence (mild). Absent a clear diagnosis of alcohol abuse or alcohol dependence, Applicant need not demonstrate for mitigation fulfillment of the conditions set forth in E2.A7.1.3.4. (successful completion of inpatient or outpatient rehabilitation, abstention from alcohol for at least twelve months, participation frequently in AA or other support network, and receipt of a favorable prognosis by a credentialed medical professional or licensed clinical social worker). However, he still bears a heavy burden to overcome the security concerns engendered by his excessive alcohol consumption with three drunk driving incidents (two before he turned age twenty-one), the most recent of which he committed after completion of a fourteen-day inpatient DUIL program.

Applicant submits in mitigation the absence of any alcohol-related incidents since December 1995 and significant changes in his personal situation with his marriage, fatherhood and defense-related employment. Since his last OUIL in December 1995, Applicant's lifestyle has become more stable. Married in June 1997 and the father of a young son born in December 1997, Applicant and his spouse in August 2000 purchased their first home. As corroborated by his employment references and performance evaluations, Applicant has proven to be a hard-working, energetic engineer. Yet, notwithstanding his very serious alcohol-related legal difficulties, which included incarceration in a halfway residential home in 1996 and electronic monitoring on release, Applicant in 1997 resumed consumption of alcohol. The fact that Applicant returned to intoxicant use after a year or so of abstention, albeit in reduced quantity from that prior to his last OUIL, raises security concerns. Drinking is not necessarily disqualifying, especially absent a clear diagnosis of alcohol dependence or alcohol abuse.[(8)] However, Applicant informed the DSS special agent in December 1999 that from summer 1998 to present (December 1999) he consumed two beers per month, at home, and he intended to continue that level of drinking in the future. At his hearing, he described his drinking habits from 1997 as two to three beers per week. Assuming Applicant was candid with the agent, his recent involvement represents an increase in consumption level. The regularity of his drinking and the increase in frequency since 1999 cast doubt as to his future ability to maintain responsible, controlled consumption, especially where he has not continued in AA or other alternative such as Rational Recovery. Applicant admitted at the hearing that when he was discharged from the alternative center in 1996, the center's staff was "adamant" about AA or other support group. Applicant elected not to pursue any affiliation with such support groups as he did not then (and does not now) think he needs them. Even though there is no evidence Applicant has been legally intoxicated in at least the last four years,[(9)] and he no longer socializes with those with whom he abused alcohol in the past, the risk of relapse into abusive drinking cannot be discounted. Accordingly, adverse findings are warranted with respect to subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., and 1.f. of the SOR.

Applicant's repeated drunk driving falls within the ambit of guideline J as well, for it was in violation of state law as well as posed a serious risk to the public health and safety. Indeed, Applicant was fortunate there was no injury to the

occupants (a mother and her seven-month-old baby) of the other car involved in the accident in September 1992. As reflected in the sentence imposed for his third offense (two years incarceration, nine months to be served with the balance suspended), Applicant's criminal conduct was especially egregious. Under the Directive following the implementation of Title 10, Section 986 of the United States Code, conditions that could be disqualifying include a. (allegations or admissions of criminal conduct), b. (a single serious crime or multiple lesser offenses), and c. (conviction in a Federal or State court. . .of a crime and sentenced to imprisonment for a term exceeding one year).

With five years having passed since Applicant's last OUIL, his drunk driving is no longer recent. While mitigating condition a. (criminal behavior was not recent) works to his benefit, and he has not operated a vehicle outside of approved hours or while under the influence of alcohol since his operator's license was reinstated with restrictions in about July 1998, Applicant cannot be granted a security clearance unless meritorious circumstances exist as determined by the Secretary of Defense. (See mitigating condition g., Potentially disqualifying conditions c. and d., above, may not be mitigated unless, where meritorious circumstances exist, the Secretary of Defense or the Secretary of the Military Department concerned has granted a waiver.). Applicant has taken steps to preclude his operation of a vehicle after drinking. Yet, his evidence in reform falls short of persuading there is little or no risk of relapse into abusive drinking. I do not recommend further consideration of this case for a wavier of Title 10 U.S.C. Section 986.

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

Paragraph 2. Guideline J: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: 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. I do not recommend further consideration of this case for a waiver of 10 U.S.C. 986.

Elizabeth M. Matchinski

Administrative Judge

1. With the issuance of the SOR, Applicant was given a copy of the Federal statute, which states in pertinent part:

§986. Security clearances: limitations

(a) Prohibition.--After the date of the enactment of this section, the Department of Defense may not grant or renew a

security clearance for a person to whom this section applies who is described in subsection (c).

(b) Covered Persons.--This section applies to the following persons:

(1) An officer or employee of the Department of Defense

(2) A member of the Army, Navy, Air Force, or Marine Corps who is on active duty or is in an active status.

(3) An officer or employee of a contractor of the Department of Defense.

(c) Persons Disqualified From Being Granted Security Clearances.--A person is described in this subsection if any of the following applies to that person;

(1) The person has been convicted in any court of the United States of a crime and sentenced to imprisonment for a term exceeding one year. . .

(d) Waiver Authority--In a meritorious case, the Secretary of Defense or the Secretary of the military department concerned may authorize an exception to the prohibition in subsection (a) for a person described in paragraph (1) or (4) of subsection (c). The authority under the preceding sentence may not be delegated.

2. Although Applicant's Answer bears a typewritten date of August 17, 2001, his response is not considered complete until it is notarized.

3. At the hearing, Applicant admitted he drank far more than he should have. He testified he drank from about 5:00 p.m. that evening until a half hour before his arrest (Transcript p.55), which according to the police records was around 1:30 a.m. (See Ex. 11).

4. Applicant left his job as a test technician at that time. (See Ex. 1). The termination of that employment coincides with the commencement of his incarceration (served in a residential center) for the OUIL.

5. When interviewed by a Defense Security Service (DSS) special agent in December 1999, Applicant indicated he stopped drinking following his third OUIL until summer 1998 when, while entertaining relatives, he decided he was able to handle beer in moderation, so he resumed intoxicant use. (Ex. 2). At the hearing, Applicant testified he abstained from drinking entirely after his arrest in December 1995 to his trial in June 1996 and while he was a resident of the alternative center. He testified at some point thereafter he decided to have an alcoholic beverage, but could not recall when it was. Applicant then described a pattern of consuming two to three beers a week at the most from early 1997 to present. (Transcript pp. 69-70).

6. Applicant's hearing testimony of his drinking habits since 1997 (two to three beers per week with an occasional beer at lunch; See Transcript pp. 69-70) is at variance with his account to the DSS agent (two beers per month, at home; See Ex. 2). Assuming Applicant was forthcoming with the agent, then his consumption has increased since December 1999.

7. Under the provisions of 10 U.S.C. 986 (P.L. 106-398) a person who has been convicted in a Federal or State court, including courts marital, and sentenced to imprisonment for a term exceeding one year, may not be granted or have renewed access to classified information. In a meritorious case, the Secretary of Defense or the Secretary of the Military Department concerned, may authorize a waiver of this prohibition.

8. The Directive does not mandate that the diagnosis/evaluation be rendered in accord with the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, but does require that it be made by a physician, clinical psychologist, or psychiatrist, or by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

9. Applicant testified he consumed four or five beers in a sitting on his honeymoon in June 1997. Absent information of the time frame over which he imbibed this amount, it cannot be determined whether he was impaired to the point of legal intoxication. It is noted that on the occasion of his first arrest, Applicant blew a .16% blood alcohol content after

consuming two or three beers in a short period of time.