DATE: May 21, 2003

In re:

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

Applicant for Security Clearance

CR Case No. 01-21828

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Marc Curry, Department Counsel

FOR APPLICANT

Jon L. Roberts, Esq.

SYNOPSIS

Applicant presents with a history of judgment and trust issues arising out of his employment with two companies involved with the development of computer linked debit cards in the mid-1990s. The most serious allegations made against Applicant involved potential selling of proprietary source codes and withholding of source code changes from an employer for the purpose of extorting the payment of expenses, before being fired by his company. These allegations are unsubstantiated. Other judgment-related allegations pertaining to Applicant's misuse of a company credit card to obtain cash for use in gambling were established by the proofs but were isolated and mitigated by the passage of time with no further incidents of judgment/trust lapses. Alcohol abuse allegations linked to Applicant's isolated and aged DuI offense, excessive drinking (some during business meetings with clients) and charging of excessive amounts of alcohol to his company credit card have not been repeated and are mitigated by the passage of time, demonstrated overall reliability and trustworthiness, and recent a positive evaluation by a credentialed substance abuse counselor. Clearance is granted.

STATEMENT OF THE CASE

On June 13, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to 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 Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on June 26, 2002, and requested a hearing. The case was assigned to this Administrative Judge on December 23, 2002. Hearing was scheduled on January 14, 2003 for hearing on February 5, 2003. Hearing was reconvened on February 5, 2003, as scheduled, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing,

the Government's case consisted of two witnesses and five exhibits; Applicant relied on ten witnesses (including himself) and twenty two exhibits. Transcripts (R.T.) of the proceedings were received on February 20, 2003.

PROCEDURAL

Before the conclusion of the hearing, the Government moved to amend the SOR to conform to the evidence by adding a separate falsification allegation under Guideline E to claim Applicant deliberately omitted his being fired from XP in February 1995. Applicant objected to the Government's amendment, claiming prejudicial surprise and the absence of any evidence Applicant was fired from XP. Applicant's opposition was found to have merit (*see* R.T., at 92-111). The evidence presented revealed that XP sold its vending system assets (Applicant's contract included) to CC in February 1995. Applicant's sale to CC did not amount to a firing by XP, regardless of the adverse feelings expressed by XP's president for Applicant's actions while working the AL project. The Government's motion to amend was, accordingly, denied.

STATEMENT OF FACTS

Applicant is a 55-year old senior software engineer for his defense contractor who seeks a security clearance.

Summary of Allegations and Responses

Applicant is alleged to have (1) been fired from his job with CC in October 1995 after changing codes of company computer systems without permission, (2) charged gambling markers in excess of $700.00 and excess amounts of alcoholic beverages to his company credit card without authorization in early 1995, (3) altered a source code on a computer system he was tasked to work on for CC while in Thailand in 1995, and then withheld the alteration from his employer to extort payment of expenses, and (4) caused his AL employer to suspect Applicant intended to sell computer source codes relating to G and F systems, and take actions to significantly alter project development.

Additionally, Applicant is alleged to have (a) consumed alcohol 3 to 4 times weekly, (b) consumed 2 to 8 drinks per sitting, (c) charged excessive amounts of alcohol to his company credit card without authorization during a work trip on the AL cruise ship, (d) consumed excessive alcohol during business meetings with clients and (e) been arrested in about 1984 for DuI, and later sentenced to serve two days in jail and ordered to pay a fine and costs.

For his response to the SOR, Applicant denied most of the allegations: Specifically, he denied changing source codes without permission (claiming he changed only the password for the system in Thailand as a matter of standard procedures. He denied, too, having any knowledge of computer source codes used by XP, or to have any time tried to sell or give away any source code. He denied consuming 2 to 8 drinks per sitting (admitting to no more than 2 to 5 a sitting on further reflection). Also, he denied charging excess amounts of alcohol to his credit card without authorization while on a cruise line work trip in early 1995.

Applicant did admit to charging gambling markers in excess of $700.00 during his work trip with XP in late 1994 and early 1995. He claimed to have used his company credit card in lieu of his own card (which had been canceled after embarking) in order to obtain personal cash, some of which he regrettably used to gamble with. He admitted to using a sign and sale credit card given him to comp the crew members who had helped him to maintain the equipment. Applicant claimed to have assumed the sailing card given him to have been intended was to be used to cover per diem costs he was entitled to, which he now realizes was a mistake. He claimed his credit draws were fully reimbursed by his pay attachment by his XP employer.

Applicant admitted, too, to consuming alcohol 3 to 4 times a week and being arrested for DuI in 1984, which he attributed to a terminal illness and death of his wife.

Relevant and Material Factual Findings

The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference adopted as relevant and material findings. Additional findings follow.

Applicant's XP relationship and tasked project work

Applicant was employed as a senior systems engineer with XP in October 1993 at a starting salary of $38,000.00 (*see* ex. T). His position description required both software programming and hardware configuration of vending access control systems. His listed major mission was to program software to operate multiple XP access control systems under a coded multi-drop RS application. The initial system application of the software to be programmed by Applicant was to interface to four XP debit vendacard systems using identified serial applications. Basically, Applicant's mission was to develop an on-line debit card system that would be computer linked and permit customers to interrupt service and return to it, and then make sure it worked properly (*see* R.T., at 69-70). Applicant certified to XP's president (A) that he had experience in the development of on-line debit card systems of the type XP wanted to develop and could build for XP a debit card system that interfaces with a host computer and informs the card holder what he or she has left on the card (*see* R.T., at 299-300). Before going to work for XP, Applicant signed a non-disclosure agreement with XP in which Applicant committed to protecting XP's software, hardware secrets, business operations and other proprietary interests and not divulging any of its covered assets to other companies and persons (*see* R.T., at 37-38).

When he went to work for XP in October 1993, Applicant basically began building the debit card reader system from the ground up (*see* R.T., at 301). And in the beginning, A was very impressed with Applicant's displayed skills in handling both of the XP projects assigned to him: the computer based network system and the AL cruise line project (*see* exs. 4 and A). Applicant's new position did require some traveling initially: no more than 25 per cent of the annual work schedule (ex. T). After over a year on his new job, Applicant was credited by his company's (*i.e.,* XP) president with being an exemplary hardware/software engineer and given both a raise and 10 per cent year end bonus of $3,800.00 that reflected the work he put in during calendar year 1994, less the $1,000.00 that had been earlier provided him against his promised bonus (*see* ex. 4)).

Applicant continued to make positive impressions with XP's president (A) throughout 1994 and in to 1995. In a January 1995 review of Applicant's tasked computer based network project, A provided him a check list of problems that needed targeting by Applicant in 1995 A also confirmed Applicant's 5.3 per cent salary increase to $40,019.20 (effective January 1995) as well as a bonus entitlement of $3,900.00 (apparently in reference to the promised $3,800.00 bonus), less an earlier bonus advance of $1,000.00, upon Applicant's completion of the other project Applicant was tasked to complete: the carnival project. Additional merit bonuses (5 in all) were once again affirmed as earmarked incentives for him upon completion of each of his project assignments (*see* 4). And A documented various progression benchmarks on the network project for Applicant.

After completing the AL debit card system in December 1994, Applicant was initially warmly received by A and credited with timely completion of the system by A. He was given his earmarked $3,800.00 year end bonus in December 1994 in recognition of the work he performed in calendar year 1994 and promised even more profits in 1995 based on XP's new products designed by Applicant (*see* ex. 4). A backtracked, however, in early 1995 in the wake of claims in late 1994 by the cruise line customer of dissatisfaction with Applicant's installed AL debit card system (*see* exs. A and B; R.T., at 72), but not before confirming Applicant's completion of the AL project in a timely way (*see* ex. 4).

By early 1995, XP was claiming it was holding on to the agreed $3,800.00 bonus, less the $1,000.00 advance previously made pending acceptance of the cruise line project by the customer (ex. A). This followed notification in late 1994 from the cruise line that the debit system installed by Applicant was not working properly (*see* R.T., at 72). Applicant, in turn, was quickly dispatched to fix the system. And for a six week period spanning late 1994 and January 1995, Applicant staged repair efforts on board the cruise ship, logging 18-hour work days (*see* response; R.T., at 388-90). It is not clear from the record whether Applicant ever repaired the debit system to the cruise line's satisfaction.

Applicant's use of company and ship credit cards while at sea

While at sea on the cruise ship (from late 1994 through January 1995), Applicant was given a business credit card by XP to use as a back up or "just in case" (*compare* R.T., at 34 with R.T., at 313-14, 378-79). Once on ship, he charged drinks and gambling markers initially on his own personal credit card. Not long after the ship's departure, however, he was notified by his credit card company that his personal credit card had been charged over the limit (by his girlfriend)

and was no longer available to him. Told by A that his company credit card could be used on ship when necessary, he interpreted his authorization broadly and used the card to obtain cash: approximately $1,200.00 in all (*see* ex. 3 and B; R.T., at 384-85). With the cash, he incurred between $700.00 and $1,200.00 of gambling markers: the balance he used on off-ship personal expenses, such as food, alcohol, boating, sight seeing and Monday Night Football events (*see* ex. 3; R.T., at 3-9, 380-83, 390-98). Besides his company credit card, Applicant was also given a sign and sail card by his cruise line customer when he boarded the ship. Impressed with the understanding that the sign and sale card was complementary for use in purchasing drinks on board, he proceeded to use the card to buy drinks after work hours and during work breaks for himself and crew members who had helped him with equipment, running up charges in excess of $1,000.00 (*see* R.T., at 314-15 ,386-95).

When Applicant returned from his cruise line repair mission near the end of January 1995, he was upbraided by A for using his company credit card and cashing his company check without company authorization (*see* ex. B; R.T., at 33-36, 44). A talked of wanting to fire Applicant but instead negotiated a sale of the incompleted network software, hardware card reader mechanisms, and Applicant as an included asset in the package sale for around $75,000.00 (*see* R.T., at 47-48, 97-99, 125, 162-63). B of CC accepted Applicant along with the rest of the project assets transferred to his firm by XP and was told nothing of any firing by B. Asked by Department Counsel whether he had ever been fired from a job, Applicant affirmed his belief that he had been sold by XP to CC, but never fired (*see* R.T., at 367-68). Applicant's claims are corroborated and accepted. Applicant's inclusion in XP's package sale to CC cannot, as such, be considered a firing or involuntary termination for cause, no matter the extent of A's dislike for Applicant.

In his February 1995 letter to B of CC, A not only confirmed the project's transfer, but he insisted Applicant still owed his company $3,800.00 for the check Applicant previously cashed without permission (*see* ex. B). A (according to his February 1995 letter), after netting out the $1,000.00 previously given Applicant as a cash advance, billed Applicant for his expending $3,000.00 on the company credit card provided him without authorization, less amounts already taken from his salary for the previous two weeks. A, in turn, deferred to Visa to pursue Applicant for the unauthorized charges approximating $1,200.00 (*see* exs 3 and B). This piece of correspondence was preceded by an earlier February 1995 letter from A to Applicant demanding restitution of the check funds cashed by Applicant without authorization (ex. C) and intention to deduct the charges from his weekly compensation. Pressed in cross-examination to explain the basis of his check cashing unauthorization charges against Application, A could not (*see* R.T., at 54-57). A's claims that Applicant cashed the bonus check given him for services rendered in 1994 sans any authorization are neither documented nor probatively explained, are disputed by Applicant (who claims A gave him the bonus check sans any instructions not to cash it), and cannot be sustained on the basis of the evidence presented (*see* R.T., at 308-09). For the balance of the time Applicant remained with XP (*i.e.,* through February 1995), his wages were garnished by XP to repay the travel and bonus funds, A insisted Applicant owed XP (*see* R.T., at 317-18). Any monies owed to XP that were not repaid by garnishment of Applicant's wages were absorbed in the proceeds (around $75,000.00) XP received from CC in consideration for the package sale of its network system assets (Applicant's service contract included) to CC.

Besides charging Applicant with cashing a bonus check without authorization, A claims suspicions of Applicant's exhibiting intentions of selling XP computer source codes relating to the G and H systems. A based his suspicions on a phone call he received from B of CC in which B claimed to have been offered XP software access from Applicant (*see* R.T., at 39, 60). B could offer no proof beyond gut feelings of being offered access to XP software from Applicant (*see* R.T., at 111-12, 138). A insisted, too, that Applicant never developed any quality systems for XP during his employment stay, a claim that was never documented nor accepted by Applicant. No inferences of less than good faith quality performance furnished XP by Applicant during his thirteen month plus stay with the company are warranted on the basis of the evidence presented.

Applicant's relationship with CC

Upon joining CC in February 1995, Applicant became responsible for developing a debit card system for a theme park in Thailand. At some point in his assignment, he changed the source codes on the software he was working with as a standard security precaution. When asked about password changes, Applicant regularly provided the changes to B (*see* ex. D; R.T., at 136-37).

Later in his employment with CC, Applicant was on travel to FC on a project and understood he would be promptly

reimbursed for his travel expenses on a per diem basis. When he wasn't provided reimbursement for his expenses incurred on travel after the first couple of weeks into the FC project (*compare* ex. F with R.T., at 142-49), he suspended working on the project and returned home (in October 1995). Just before returning home, however, he was asked by B to provide password changes (*see* ex. D), which Applicant promptly took care of (*see* ex. E; R.T., at 344-45). Later told by the new software engineer B hired to complete the debit card system started by Applicant that the codes had been changed, B went to Applicant's home (some two weeks after Applicant had returned from his FC trip) to retrieve still another set of passwords (*see* R.T., at 346-48). Because Applicant had still not been reimbursed for his travel expenses by CC, he momentarily resisted B's verbal profanity-laced demands, but only for a few minutes. Before B left his home, Applicant provided him two emergency diskettes containing the codes demanded by B. Applicant assures he never tried to extort his owed expenses from B, a claim B does not controvert (*compare* R.T., at 169 with R.T., at 347-48). As B was exiting Applicant's home with the diskettes containing the code changes, he turned and fired Applicant (*see* R.T., at 105, 111), and to this date has not been reimbursed Applicant for his trip expenses (*see* R.T., at 347). B's attribution of poor judgment, wrongful changing of source codes and withholding source code changes to Applicant are neither documented nor corroborated and are considered unproven. No inferences of any wrongdoing maybe attributed to Applicant during his tenure with CC.

Since being terminated by B of CC, Applicant has never been reimbursed for his trip expenses on the FC project and has essentially given up hope of ever being reimbursed by either B or his VC company. No inferences of any wrongful conduct may be attributed to Applicant during his ten-month tenure with VC. Competency issues regarding his tasked missions with XP and CC are not raised in the SOR and cannot be resolved probatively in any event based on the evidence presented.

Applicant's alcohol history

Between 1984 and 1995, Applicant consumed alcohol at varying levels. His first confirmed abuse of alcohol occurred in June 1984, when he consumed excessive amounts of beer before getting into his car and driving home. After pleading guilty to DuI charges, he was sentenced to two days in jail and fined. Since 1984, his use of alcohol has varied. While on the cruise line ship (between late 1994 and early 1995) he bought drinks for crew members and drank regularly with them to relax after and between long shifts: His alcohol purchases on this trip exceeded $1,000.00. Since 1995 he has continued to consume alcohol, generally between three and four times a week and between two and five drinks per sitting (adjusted downwards from the estimate he gave to the interviewing DSS agent in April 2001). On a number of these occasions, he consumed alcohol enough to expose him to intoxication (*i.e.,* between 2 and 5 drinks a sitting), but never to the point of being out of control, never to the point of blackouts, and never while driving or during work hours.

Applicant was recently evaluated by a certified substance abuse counselor and found to be free of any alcohol-related problems. In her February 2003 evaluation, Dr. A diagnosed Applicant with no current substance abuse issues indicated. She reached this diagnosis on the basis of a historical profile that took into account his employment history, consumption pattern, absence of any alcohol-related incidents in or out of the workplace, family/social relationships and treatment-free history (*see* ex. R). He was recently randomly screened (in February 2003) for illegal drugs and alcohol: His test results were negative for any illegal drugs or alcohol in his system (*see* ex. S). He has maintained abstinence for the past thirty days, claims no desire to drink at the present and assures that resumed drinking on his part in the foreseeable future will be no more than light to mild (*see* R.T., at 364-65).

Friends of Applicant who operate drinking establishments or socialize with him report no observed Applicant problems with alcohol (*see* exs. G and H; R.T., at 178-79, 182-83, 187-88, 191-92). Program managers, team managers and colleagues at work who either have socialized with Applicant or are familiar with his work and off-work habits credit him with avoiding any perceived abuse of alcohol during social functions (*see* R.T., at 200-01, 221-23, 235-37, 284-87).

Applicant's professional evaluations

Applicant is highly regarded professionally by his supervisors and colleagues. Program and team managers, as well as colleagues, who interface with him regularly describe him as a highly competent software engineer who customarily is a first stop for any encountered software problem. He is credited with consistent adherence to security and work place regulations with his current employer. All of his program and team managers express full confidence in his judgment,

reliability and trustworthiness.

POLICY

The Adjudicative Guidelines of the Directive (Change 4) list "binding" policy considerations to be made by Judges in the decision making process covering DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board, requires the Judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the Judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

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.

Disqualifying Conditions:

DC 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.

DC 5 Habitual or binge consumption of alcohol to the point of impaired judgment.

Mitigating Conditions:

MC 1 The alcohol related incidents do not indicate a pattern.

MC 2 The problem occurred a number of years ago and there is no indication of a recent problem.

MC 3 Positive changes in behavior supportive of sobriety.

Personal Conduct

Basis: conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Disqualifying Conditions:

DC 1 Reliable unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances.

DC 4 Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress.

DC 5 A pattern of dishonesty or rule violations.

Mitigating conditions:

MC 1 The information was unsubstantiated and was not pertinent to a determination of judgment, trustworthiness or reliability.

MC 4 The individual has taken positive steps to reduce or eliminate vulnerability to coercion, exploitation, or duress.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on mere speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a nexus to the applicant's eligibility to obtain or maintain a security clearance. The required showing of nexus, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSION

Appellant comes as a highly regarded senior software engineer who is charged with altering source codes without permission, running up large gambling markers on a company credit card without company authorization and suspected selling of proprietary source codes to a competitor while employed by two different companies in 1995. Alcohol-related conduct is another issue addressed in these proceedings that impact on Applicant's being granted access to classified information.

Applicant's administering to source codes and misuse of company credit card

Over the course of a fifteen-month employment relationship with XP, Applicant enjoyed mostly excellent professional regard for his software design skills and professional judgment. So impressed was his manager (and president of XP) with his contributions in 1994, he rewarded him with a $3,800.00 bonus, which he tendered to Applicant in December 1994 without any reservations or qualifications on cashing the check. It was only after XP was notified of Applicant's ship charges on the company's credit card upon Applicant's return from travel that A changed his public impressions of Applicant. For his use of the company card to obtain cash for ship gambling and off-ship expenses during his off-duty hours (which were few), Applicant expressed considerable remorse. He acknowledges his exceeding implicitly reasonable limits on his use of the AP credit card given to him by A (despite the lack of clarity in A's credit card instructions) and fully accepts his actions to represent poor judgment choices.

But the gravamen of A's charges leveled at Applicant is not over the latter's use of the company credit card, which was mostly covered by set offs of salary payments owed Applicant. A's principal grievances lie with the reports he received from B of CC of Applicant's expressing interest in selling proprietary codes of XP to actual and potential competitors like CC. A's reports were based on suspicions harbored by B, which turned out to be devoid of any factual basis. So, at least as to the allegations covered by sub-paragraph 1.d of the SOR, these allegations are unsubstantiated.

Because Applicant could not claim actual authorization to use his company credit card to obtain cash to fund gambling markers exceeding $700.00, Government does meet its proof burden on this allegation. The proofs are sufficient also to enable Government to meet its initial burden with respect to the allegations in sub-paragraphs 1.a and 1.c that he altered source codes on the computer system he was tasked to work on by CC between February and October 1995, and did so without express permission from CC's B. But the evidence is probative, too, that Applicant's changes of the source codes on the Thailand project for CC represented a routine practice undertaken for prudent security reasons, and not for

any venal purposes. The evidence is also clear that Applicant's withholding of the source code changes from B when the latter came to his home was very brief (a few moments at most) and was followed by Applicant's voluntarily returning the changed codes to B without payment of his expenses.

Disqualifying conditions (DC) that may be invoked under the Adjudicative Guidelines for personal conduct are few: DC 1 (reliable unfavorable information provided by an employer), DC 4 (personal conduct that increases the person's vulnerability to coercion, exploitation, or duress) and DC 5 (pattern dishonesty or rule violations). These disqualifying conditions are limited to the allegations pertaining to Applicant's misuse of his company credit card with XP and his withholding his source code changes from his CC employer for a momentary period before reconsidering and giving the codes over to B without any assurances of being reimbursed his expenses. The balance of the allegations pertaining to claimed misconduct by Applicant were unsubstantiated.

As to the covered allegations for which there is insufficient proof to sustain affirmative factual findings (*viz.,* his changing source codes without permission, altering them to extort payment of business expenses and exhibiting intentions to sell proprietary source codes), Applicant may take full advantage of mitigating condition (MC) 1 (the information was unsubstantiated). On those allegations for which there are sufficient proofs to sustain affirmative facts (viz., running up large implicitly unauthorized debit balances on his XP credit card and withholding sources codes from his CC employer), Applicant pitches a strong case of mitigation. Except for isolated instances of mistaken judgment in his running up large cash balances on the XP credit card given him for the ship assignment with AL, and later in his momentary delay in delivery his source code changes to CC's B, Applicant establishes a praiseworthy history for good judgment, reliability and trustworthiness in meeting his tasked mission requirements with his various employers, including his most recent one. Not only was XP reimbursed directly and indirectly by Applicant for the company credit card charges, but CC's source code changes were promptly returned to its president (B) after a momentary withholding of the code changes by Applicant. For the brief judgment lapses Applicant exhibited in running up excessive credit charges on his XP card and hedging momentarily on turning over his code changes to CC, Applicant has expressed considerable remorse and commitments to avert such mistakes in the future. To date, he has consistently avoided any repeat judgment lapses. With over seven years now of reformed professional practices in his dealing with company expenses and other administrative rules, Applicant successfully overcomes adverse security concerns attributable to his past mistakes with XP and CC. Favorable conclusions warrant with respect to the allegations covered by Guideline E.

Applicant's alcohol problems

Government raises additional security-related concerns about Applicant: past Applicant abuses of alcohol. Before 1994, Applicant was by all accounts a social consumer of alcohol with a very limited history of alcohol-related incidents attributable to him: the DuI incident of 1984, to which he pleaded guilty. This changed somewhat in late 1994 when he boarded the AL ship for a six week working cruise while in the employ of XP. His purchases of alcohol for himself and crew members was considerable for the six weeks logged on this trip in which by his own accounts he worked 18-hour days. And because of the close proximity of Applicant to the crew members and minimal time between breaks and shift relief, Applicant's drinking (while technically off-duty) is security significant.

Absent any documented incidents of abusive drinking on the XL cruise ship (and none are manifest in the record), security-related concerns are more difficult to gauge and pinpoint. Because even though Applicant's running up of a $1,000.00 plus bar bill for his AL crew members over a six-week voyage represents a considerable amount of purchased alcohol, his expenditures are not associated with any documented abuses of alcohol. Without documented incidents of alcohol abuse aboard the AL ship, none can be inferred or imputed. sufficient to enable Government to meet its initial burden.

On the strength of the evidence presented concerning Applicant's drinking habits alone, two disqualifying conditions (DC) of the Adjudication Guidelines for alcohol consumption may be invoked by the Government: DC 1 (alcohol-related incidents away from work) and DC 5 (habitual or binge consumption).

Mitigation is considerable for Applicant. He has continued to drink over the seven years that have elapsed since his abrupt sale to CC in 1995, but at diminishing levels, and only occasionally to the point of abuse or intoxication. Since remarrying this past year he has cut his alcohol-intake even more. Dr. A found no detectable alcohol-related problems in

her 2003 evaluation of Applicant, and Applicant assures he will not abuse alcohol in the future. His reformist efforts in reducing his alcohol intake have been conspicuously noted by his managers and colleagues at work as well.

The Government acknowledges Applicant's mitigation efforts as considerable and does not press this area of concern in its closing remarks. However, assessment of Applicant's alcohol-related conduct must be made on the basis of a review of the entire evidentiary record developed to date, not merely the information developed with respect to his identified alcohol abuse and ensuing counseling and reformist efforts. In making an overall assessment of Applicant's clearance eligibility, major emphasis must be accorded his most recent drinking history, job performance and support he receives from his program managers and work colleagues. In Applicant's case, his support base remains very strong among those who know him professionally and personally.

By his actions and improved understanding of his drinking limits, Applicant demonstrates he has taken the necessary restorative and corrective measures in his personal affairs to ensure that he does not repeat the same or similar judgment lapses associated with his prior problems with alcohol abuse. His mitigation efforts not only reflect important reductions in the amount of alcohol he typically consumes, but some manifest sustaining positive steps to ensure that he does not experience any alcohol abuse issues in the future.

Applicant's demonstrated efforts to remedy his judgment lapses associated with alcohol abuse enable him to take advantage of two mitigating conditions (MC) of the Adjudication Guidelines for alcohol consumption: MC 2 (problem occurred a number of years ago and there is no indication of a recent problem) and C 3 (positive changes in behavior). Altogether; Applicant provides sufficient demonstrative indications of sustained mitigation of his past drinking excesses to overcome any residual security risks associated with his past alcohol-related judgment lapses.

Considering the record as a whole, Applicant makes the convincing showing that he has both the maturity and resource support at his disposal to avert any recurrent problems with judgment lapses related to alcohol to warrant safe predictions that he is no longer at risk to judgment impairment associated with such conduct. Favorable conclusions warrant with respect to the judgment impairment allegations covered by Guideline G.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the E 2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

Sub-para. 1.d: FOR APPLICANT

GUIDELINE G (ALCOHOL): FOR APPLICANT

Sub-para. 2.a: FOR APPLICANT

Sub-para. 2.b: FOR APPLICANT

Sub-para. 2.c: FOR APPLICANT

Sub-para. 2.d: FOR APPLICANT

Sub-para. 2.e: FOR APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Roger C. Wesley

Administrative Judge