

DATE: June 2, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-26767

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant had a serious alcohol problem for about twenty-five years to July 1998, with drunk driving offenses in 1974, 1982, 1984, 1987, an alcohol-related reckless homicide in August 1975 for which he was awarded an indeterminate sentence of three years in prison, and two domestic incidents involving alcohol in 1998. He also smoked marijuana from 1974 to 1998, on a weekly basis through the 1980s. Facing divorce and the potential loss of a relationship with his daughter, Applicant committed himself to sobriety, and with the aid of counseling and Alcoholics Anonymous (AA), he has been drug and alcohol free since July 1998. Yet, pursuant to 10 U.S.C. §986, the Department of Defense is precluded from granting him a security clearance because of the prison term imposed for the 1975 reckless homicide. Clearance is denied.

STATEMENT OF CASE

On October 23, 2002, 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) 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 his security clearance. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR alleged excessive alcohol consumption (guideline G) with repeated drunk driving and a 1975 reckless homicide; criminal conduct (guideline J) for the alcohol-related criminal offenses and a July 1998 arrest for possession of drug paraphernalia and violation of protective order; and illegal drug involvement (guideline H) for experimentation with speed in the 1970s, occasional use of marijuana from 1974 to 1998 and the July 1998 illegal possession of paraphernalia. Applicant's conviction of the 1975 reckless homicide, for which he was given an indeterminate sentence of three years in prison, allegedly disqualified him from having a security clearance granted or renewed pursuant to Title 10, Section 986 of the United States Code.

On November 8, 2002, Applicant responded to the SOR allegations and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on January 10, 2003, and pursuant to formal notice, a hearing was scheduled for February 28, 2003. At the request of the Government, a continuance was granted. On March 3, 2003, the hearing was rescheduled for March 18, 2003. At the hearing held on March 18, 2003, the Government submitted five exhibits, entered without objection. Applicant's case consisted of nine exhibits, his testimony and the testimonies of a personal friend and of the person who had served as a court appointed guardian ad litem for his daughter during Applicant's divorce. DOHA received the transcript on March 31, 2003.

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, a 48-year-old marine electrician, has worked for the same defense contractor since November 1976. He requires a secret clearance for unaccompanied access to secure areas at the worksite.

Applicant had a long and dangerous relationship with alcohol, which continued until July 1998, despite very serious legal and social consequences. As a high school student in September 1968, Applicant began to consume beer with friends at parties on weekends. His pattern of drinking one to six beers at social gatherings continued after he graduated in June 1972. While at trade school in January 1974, Applicant began to smoke marijuana with friends at parties when the drug was passed around, generally on a once weekly basis. He also experimented with speed in the 1970s. Applicant's use of marijuana remained steady, at once per week to January 1991. On occasion during the latter half of the 1970s and throughout the 1980s, Applicant purchased marijuana for personal use when he was among his friends, spending on average \$200.00 to \$300.00 per year.

However, alcohol remained Applicant's drug of choice, and his involvement with the mood-altering substance increased gradually from June 1974. After consuming beer to intoxication at a wedding reception in September 1974, Applicant was arrested for operating under the influence (OUI). Convicted of the offense, Applicant made little effort to change his drinking habits as it seemed to him that everybody was getting arrested for drunk driving around that time.

After a night of drinking in August 1975, Applicant proceeded to drive his companion and two female friends home. He crashed his vehicle and the two girls were killed. Applicant had little recollection of the incident, to the point of not even being certain whether he was the driver. (1) Arrested and charged with reckless homicide, Applicant did not contest the felony charge, and in October 1975 he received an indeterminate sentence of three years in prison; he served 180 days. Lacking insight about his drinking and with no treatment referral, Applicant resumed his consumption of alcohol, although he promised himself he would never again drive while drunk. He also returned to smoking marijuana once a week on average with friends.

Caught driving with a blood alcohol content of .20% in October 1982, Applicant after this OUI referred himself to a twenty-eight day inpatient alcohol treatment program at an addiction center (hereafter addiction center) affiliated with a local hospital. Under the care of a licensed alcohol and drug counselor (LADC), Applicant participated in individual and group therapy and attended twice weekly AA meetings. On completion of the program, Applicant continued in AA for about a year and remained abstinent from alcohol and drugs. Fooled into thinking he had control over his drinking, Applicant resumed consumption of beer in early 1984. Within a short period, he was back in his old pattern of a few beers three or four nights per week with heavy drinking on one of the weekend days and smoking marijuana on average once per week with friends. (2)

In February 1984, Applicant had an accident while driving with a blood alcohol content of about .20%. Convicted again of OUI, Applicant continued to drink alcohol almost every day and to smoke marijuana on average weekly. He celebrated New Year's 1987 by drinking with friends, and was arrested for OUI. Found guilty, Applicant was sentenced to thirty days in jail (twenty served), a fine and loss of license. Having lost his license, it was now easy to abide by his commitment to himself not to drink and drive.

From June 23, 1988 to July 10, 1989, Applicant received voluntary treatment for chemical dependency (alcohol). He attended two individual therapy sessions, 49 early recovery aftercare group sessions, and AA once to twice weekly. At

discharge, Applicant's counselor recommended a minimum of one to three AA meetings weekly. While he felt Applicant had gained some self-awareness as to the behavior patterns that had led to substance abuse, and had initiated lifestyle changes, Applicant was scared to let go of familiar patterns.

By January 1991, Applicant had returned to drinking, albeit with some initial success in controlling it. He also resumed his marijuana use, but at a reduced frequency of twice per year. Thinking it would help his drinking if he settled down, Applicant in about 1992 began dating a coworker, a divorcee with a daughter of elementary school age. In November 1992, Applicant and his girlfriend married, and a daughter was born to them in May 1993. Their marriage was problematic, as Applicant and his spouse were both "workaholics" and heavy drinkers, especially on the weekends. ⁽³⁾

Circa January 1997, Applicant's spouse complained she had been the victim of sexual harassment on the job the previous year. Their marriage began to deteriorate due to a significant change in his spouse's behavior. Their drinking escalated and Applicant eventually passed the tolerance bar, requiring less and less alcohol to become intoxicated.

In June 1998, having consumed beer for much of the afternoon and into the evening, Applicant quarreled with his spouse about money missing from the banking account. When he burned some food later that evening, his spouse complained to the police that he attempted to burn down the house. Applicant was forced to leave the family home. Within two weeks, his wife filed for divorce and she obtained a temporary protection from abuse order.

In early July 1998, Applicant went to the family home, hoping to settle things between them. Sober for the past five days, he brought a couple of six-packs, which he planned to drink with her. When she wasn't at the residence, Applicant parked his truck across the street and proceeded to consume the beer until he passed out. On her return home, Applicant's spouse called the police and had him arrested for violation of the protective order. During a search of his truck incident to his arrest, the police found a bowl with marijuana residue. A charge of illegal possession of drug paraphernalia was added. In court, the charges were filed for one year.

Convinced he could not regain control of his drinking without reinforcement, Applicant began attending AA meetings on a daily basis, sometimes three meetings per day. At the referral of his lawyer, Applicant was evaluated in August 1998 by the same LADC who had treated him in 1982. She diagnosed him as alcohol dependent with poor insight into his alcohol problem ("never quite gets it"), and recommended outpatient treatment in an early recovery group for three to six months as well as seven AA meetings per week. Applicant attended once weekly group therapy sessions from September 3, 1998 to December 11, 1998. He managed to remain drug and alcohol free.

Applicant abided by the protection order, having no in-person contact with his spouse between July 1998 and January 1999. Isolated from his daughter and concerned that she was not being cared for adequately by his spouse, Applicant realized he had to reassess his priorities, which had always been on his work, to focus instead on his sobriety and on his daughter, in that order. In addition to establishing a genuine commitment to AA by attending regular meetings and working the AA step program, Applicant cut back on his work hours to be there for his then five-year-old daughter on the weekends spent with her. On the advice of his divorce lawyer, he had a guardian ad litem appointed in January 1999 to protect the interests of his daughter. ⁽⁴⁾

In June 1999, the guardian ad litem filed an interim report with the court. In her assessment, Applicant had been sober and committed to AA since July 1998. While he shared responsibility for his daughter entering school academically deficient (especially in reading), he had also shown a genuine willingness to work on his parenting skills, having completed in mid-June a "Kid's First Program" (parenting through divorce). Applicant's spouse's life was seen as "unraveling," as she was under the treatment of a psychiatrist for depression, had two alcohol-related admissions to the hospital that April, had incurred significant credit card debt and defaulted on a loan. The guardian ad litem recommended Applicant's daughter stay with him on the weekends.

In July 1999, Applicant completed a class on effective parenting. In October 1999, after being closely associated with the family for almost ten months, the guardian ad litem recommended Applicant be the primary custodial parent. She was convinced of Applicant's sincerity and of his intent to provide his daughter with a stable home, which includes a commitment to abstention from alcohol.

In November 1999, Applicant and his spouse were divorced on the grounds of irreconcilable marital difficulties and the protection against abuse order was dismissed. Applicant and his spouse agreed to "shared parental rights and responsibilities," with primary residence of their daughter to be with Applicant in the family home. This arrangement was formalized in the divorce decree.

After he gained custody of his daughter, Applicant reduced his AA attendance as his daughter took priority. Under Applicant's care, his daughter has caught up academically with her peers. Currently a fourth grade student in the public school system, she earned for the second quarter no grade lower than a B+.

Abstinent from marijuana since sometime before his arrest in July 1998 and from alcohol since that arrest, Applicant experienced urges to drink for about a year and a half to two years following his change to a substance free lifestyle. An admitted alcoholic, he has no intent to use any illegal drug or alcohol in the future. ⁽⁵⁾ Applicant regards his sobriety as "a blessing," and substitution of marijuana for alcohol would for him "dilute the oath, a spiritual part of the [AA] program." Applicant does not keep any alcohol in his home, and did not allow any alcohol in his home for the first two years. Since he has stopped having a desire to drink, he has allowed visitors to bring their own alcohol provided they remove any unconsumed alcohol from his home when they depart.

In February 2003, Applicant met with his licensed alcohol and drug counselor from the addiction center. In her professional opinion, Applicant is "very stable in his sobriety," as well as a responsible and involved parent for his daughter.

Applicant never allowed alcohol to negatively impact his work performance for the defense contractor. As a marine electrician who tests electronic equipment aboard ship, Applicant has been an asset to his department. He has committed no security infractions in the past ten years. There is no record concerning his compliance with security procedures before then.

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: ⁽⁶⁾

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:

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.A7.1.2.1.)

Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program (E2.A7.1.2.4.)

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

Conditions that could mitigate security concerns include:

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

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

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 admission 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-martial of a crime and sentenced to imprisonment for a term exceeding one year

Conditions that could mitigate security concerns include:

- f. There is clear evidence of successful rehabilitation
- 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. [\(7\)](#)

Drug Involvement

The Concern:

a. Improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

b. Drugs are defined as mood and behavior-altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (*e.g.*, marijuana or cannabis, depressants, narcotics, stimulants and hallucinogens); and

(2) Inhalants and other similar substances.

c. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

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

- a. Any drug abuse (see above definition);
- b. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution

Conditions that could mitigate security concerns include:

- c. A demonstrated intent not to abuse any drugs in the future

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, J and H:

The Government established its case under guideline G, but Applicant has mitigated those concerns through treatment and commitment to an alcohol-free lifestyle. The excessive consumption of alcohol raises security concerns, as abusive drinking often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure due to carelessness. Applicant's consumption of alcohol began to lead to adverse legal consequences in 1974, when he committed the first of five alcohol-related drunk driving offenses. (8) Having resolved to himself after the August 1975 reckless homicide that he would not drive while intoxicated, Applicant voluntarily entered treatment after a subsequent OUI in 1982. A thirty-day inpatient program with some AA involvement brought about a short-lived abstinence, as evidenced by his February 1984 OUI. Consistent with his diagnosed alcohol dependence, he relapsed to previous patterns and was imbibing almost daily with occasional blackouts by October 1987.

Following a year of outpatient counseling from 1988 to 1989, and with his marriage in 1992, Applicant managed to exercised some restraint, confining his consumption to occasions when he would not be driving. However, as his marriage began to deteriorate, his drinking escalated. By July 1998, he was at risk of losing his relationship with his daughter due to his abuse of alcohol. His record of drunk driving and habitual consumption raise very significant security issues (*see* E2. 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). Furthermore, although the clinician who counseled him at

the addiction center in 1982 and evaluated him in 1998 is a LADC rather than a master's degreed clinical social worker, the state recognizes her as qualified to treat alcohol addictions.⁽⁹⁾ Currently a senior clinician at the addiction center, this clinician has the respect of the guardian ad litem appointed by the court during Applicant's divorce. Common sense dictates the applicability of E2.A7.1.2.4. (evaluation of alcohol dependence by a licensed clinical social worker who is a staff member of a recognized treatment program) as well.

In his favor, Applicant has not consumed alcohol since July 1998. Confirmed abstinence with an unequivocal intent to forego future alcohol involvement is a favorable change in behavior supportive of sobriety (E2.A7.1.3.3.). However, since Applicant is a diagnosed alcoholic, he is required for mitigation to successfully complete inpatient or outpatient rehabilitation along with aftercare requirements, participate frequently in meetings of AA or similar organization, abstain from alcohol for a period of at least 12 months, and receive a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program (E2.A7.1.3.4.). Applicant satisfies those requirements. It took a life altering event (the divorce and potential loss of any healthy relationship with his daughter) for Applicant to realize that he was down a path of self-destruction if he did not relinquish alcohol. For about a year, Applicant was heavily invested in AA, attending meetings on a daily basis after his discharge from the outpatient early recovery group in December 1998. While his attendance is currently averaging twice per month, Applicant demonstrated at his hearing a credible understanding of the symptomatology of alcoholism and of the likely consequences to him should he abuse alcohol in the future. His present level of involvement with AA appears sufficient for him at his juncture to maintain his commitment to an alcohol and drug-free lifestyle. His former counselor, the guardian ad litem for his daughter, and a personal friend are convinced of his sincerity in that regard. In the opinion of the LADC who has treated him for his alcohol dependence and is well aware of his abuse history, Applicant is "very stable in his sobriety." Favorable findings are warranted as to subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., and 1.k., under guideline G, as Applicant is not likely to abuse alcohol in the future.

In addition to abusing alcohol, Applicant tried speed in the 1970s, and smoked marijuana on a weekly basis from 1974 to about 1991. From the mid 1970s through the 1980s, Applicant spent \$200.00 to \$300.00 annually for the marijuana he enjoyed. Following his marriage in 1992, Applicant's use of marijuana decreased significantly to about twice yearly. Clearly, even such off-duty drug use is potentially security disqualifying (*see* DC a., any drug abuse, and DC b., illegal drug possession, including purchase). For more than twenty years, Applicant saw no problem with the social use of marijuana, despite its illegality. Applicant bears a particularly heavy burden to demonstrate he will not relapse into the abuse of marijuana in the future.

The Directive provides for mitigation of illegal drug involvement if the drug use was not recent (MC a.), it was isolated or aberrational (MC b.), there is demonstrated intent not to abuse any

drugs in the future (MC c.), or satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional (MC d.). Applicant's experimentation with speed was confined to his youth. Applicant's involvement with marijuana is contrasted by its duration and regularity, especially during the early years. A determination as to the risk of relapse must take into account not only the date of last use, but also the extent and duration of involvement and the circumstances of use. The more serious or long term the abuse, the stronger the evidence of rehabilitation must be to overcome the negative security implications of that conduct.

Applicant has denied any intent to use marijuana in the future. For appropriate consideration of mitigating condition c. (there is demonstrated intent not to abuse any drugs in the future), it is not enough that one state an intent to forego any future drug involvement; the intent must be demonstrated by concrete actions taken in reform. There is no evidence Applicant has been around marijuana since 1998. His last use was sometime prior to the July 1998 incident where he was caught with marijuana residue in his truck. Applicant testified at his hearing that unlike alcohol, he was never addicted to marijuana. The absence of any purchase of marijuana since the 1980s reflects a diminished interest. Although he has not provided a satisfactory explanation for how he came by the marijuana he had in his truck on the occasion of his arrest in early July 1998, it is unlikely he would jeopardize the sobriety he worked so hard to achieve by using marijuana in the future. Applicant realizes that to substitute marijuana for alcohol would be a failure to live up to his commitment to remain drug and alcohol free for himself and his daughter. Notwithstanding his long history of marijuana abuse, there is seen little risk of him using any illegal drug in the future, so favorable findings are returned as

to subparagraphs 3.a.,3.b., and 3.c. of the SOR.

With regard to guideline J, criminal conduct, in addition to four OUI offenses, he stands convicted of a very serious reckless homicide in 1975, and more recently, of being in possession of drug paraphernalia in 1998. While there are disqualifying conditions present in this case (a. allegations or admissions of criminal conduct, regardless of whether the person was formally charged, b. a single serious crime or multiple lesser offenses, and c. conviction in a Federal or State court, including a court martial, of a crime and sentenced to imprisonment for a term exceeding one year), Applicant has been a law abiding citizen for the last four years, dedicated to rehabilitating himself from substance abuse and providing a safe environment for his daughter. To his credit, he accepts responsibility for his criminal conduct. At his hearing, he testified he thinks about the reckless homicide in particular all the time ("I don't ever want to totally let go of it." Transcript p. 67). Applicant's alcohol rehabilitation is seen as mitigating of his criminal conduct as well, given his alcohol problems were the root of his legal difficulties.

Yet, since a three year indeterminate prison sentence was imposed by the state for his August 1975 reckless homicide, this case falls within the provisions of Title 10, Section 986 of the United States Code, as amended, which has been implemented within the Department of Defense by a June 7, 2001, Memorandum from the Deputy Secretary of Defense titled Implementation of Restrictions on the Granting or Renewal of Security Clearances as Mandated by the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. Under the current adjudicative guidelines, 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.). Based on all the circumstances of this case, I cannot recommend further consideration of this case for a waiver of 10 U.S.C. §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: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: For the Applicant

Subparagraph 1.k.: For the Applicant

Paragraph 2. Guideline J: AGAINST THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: Against the Applicant

Paragraph 3. Guideline H: FOR THE APPLICANT

Subparagraph 3.a.: For the Applicant

Subparagraph 3.b.: For the Applicant

Subparagraph 3.c.: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Elizabeth M. Matchinski

Administrative Judge

1. Applicant testified that his front seat passenger admitted to him seven years after the incident that Applicant had been driving too fast, which scared him, so he grabbed the steering wheel on the curve. (Transcript p. 46).
2. Applicant testified he was "definitely over thirty before [he] figured out that there were people that didn't smoke the stuff (*i.e.*, marijuana)." Transcript p. 48.
3. During his subject interview with a Defense Security Service (DSS) special agent in November 2001, Applicant indicated that from January 1987 to June 1997, he drank socially with his wife on the weekends. At his hearing, he testified following his marriage, "it wasn't totally out of control drinking for quite a few years." At times, her drinking was worse than his, and at times, his drinking worse than hers. If they went out, he would abstain and wait to drink until he got home because he did not want to drive drunk. (Transcript p. 51). The records of Applicant's outpatient treatment in 1998 indicate Applicant had a "cautious" return to drinking, but eventually relapsed to his old pattern of a few beers three to four times per week and getting drunk on one of the weekend days.
4. As an attorney and member of the state bar, this guardian ad litem had an obligation to conduct a thorough investigation and make an informed recommendation as to the best interests of the child.
5. *See* transcript pp. 67-68. "I don't drink. I don't even, I wouldn't even dare . . . I would be getting back on a merry-go-round that I, that has a funnel in the middle, and it would just eat me alive."
6. The adjudicative factors considered most pertinent under guideline J are identified as set forth following the implementation of 10 U.S.C. §986.
7. Section §986 of Title 10 limits the grant of security clearances:
 - (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.

8. Although Applicant was not charged with OUI in connection with the August 1975 reckless homicide, Applicant admits he suffered an alcohol-related blackout which renders him to this date with no recall of the accident itself in which two female passengers were killed.

9. Under the pertinent state's licensing statutes, a licensed alcohol and drug counselor is defined as an individual who provides the service of professional drug and alcohol counseling to the public for a fee, monetary or otherwise, and who meets the criteria established in sections 6213 and 6214-A. In addition to meeting the minimum requirements (at least age eighteen, high school diploma or equivalent, demonstrated competency in the practice of drug and alcohol counseling, abstinence from active abuse of alcohol or drugs), the LADC must pass written and oral exams, possess at least an associate's degree in an appropriate social science field from an accredited institution or approved program with a concentration of course work in the core functions, complete a minimum of 4,000 supervised direct client service hours in the core functions and document experience with a wide range of clients in a wide range of treatment settings while working independently.