DATE: September 26, 2003

In Re:

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

Applicant for Security Clearance

ISCR Case No. 02-01585

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Esq., Department Counsel

FOR APPLICANT

Andrew A. Thomas, Esq.

SYNOPSIS

Applicant is an admitted alcoholic with a history of relapse into binge drinking following several inpatient detoxifications, outpatient counseling and periods of sustained abstinence. On his discharge in December 2000 from his ninth detoxification treatment, Applicant committed himself to recovery through Alcoholics Anonymous (AA). With the help of his AA sponsor and others in the fellowship, Applicant understands the symptomatology of alcohol dependence, and what he needs to do to remain sober. AA provides at this juncture the tools and support he needs to maintain the sobriety he has enjoyed since November 30, 2000. Clearance is granted.

STATEMENT OF THE CASE

On December 6, 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), issued a Statement of Reasons (SOR) to the Applicant that detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on excessive alcohol consumption (Guideline G) due to a history of abusive drinking with failed alcohol rehabilitation efforts.

On January 29, 2003, Applicant, acting *pro se*, responded to the SOR allegations and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on April 29, 2003. Counsel for Applicant entered his appearance the following day. Pursuant to formal notice dated May 2, 2003, the hearing was scheduled for May 22, 2003.

At the hearing held as scheduled, the Government submitted five exhibits entered without objections. Applicant and his AA sponsor testified on Applicant's behalf and four Applicant exhibits were entered into the record. A transcript of the

hearing was received by DOHA on June 3, 2003.

FINDINGS OF FACT

The SOR alleges alcohol consumption often to excess by Applicant from age 17 to at least November 2000 with multiple admissions for detoxification to a local alcohol treatment facility since 1991. Applicant is also alleged to have refused referral to treatment other than AA following his last detoxification in December 2000. In his Answer, Applicant indicated alcohol did not become a problem for him until he was 28 or 30. He admitted to multiple treatments for alcohol dependence with relapses from September 1991 to November 2000, but denied any drinking since November 30, 2000. Applicant asserted he and his counselor had agreed after his last detoxification that AA presented his greatest chance for maintaining long-term sobriety. After a thorough review of the evidence, and on due consideration of the same, I make the following findings of fact:

Applicant is a 45-year-old married father of two girls, ages 14 and 10. He earned his college degree in electrical engineering by attending classes at night, and has worked for a defense contractor since August 2000. He seeks a security clearance for his duties as an operations engineer.

Applicant first consumed alcohol at age 17 or 18 and he was a social drinker until about age 28 or 29 (circa 1986/87). His alcohol consumption increased in frequency and amount thereafter, especially following the unexpected death of his father in 1988. He developed a pattern of binging on a quart of brandy per day for two or three days in addition to drinking a couple of beers on a regular basis. In an effort to curb his consumption he attended a couple of AA meetings in October 1990, but did not remain with the program. In December 1990, Applicant was placed on antidepressant medication by his primary care physician following an evaluation by a psychiatrist.

In September 1991, Applicant admitted himself to a local alcohol treatment facility (facility X) for detoxification. Diagnosed as suffering from alcohol dependence, Applicant underwent an uneventful withdrawal from alcohol and was discharged four days later with a guarded prognosis.

After about 15 months of sobriety during which time he grew complacent about his alcohol problem, Applicant relapsed in December 1992. After about a month of sporadic drinking in small amounts, Applicant went on a binge of a fifth of brandy per day for five days. He readmitted himself into facility X in January 1993, where he again underwent detoxification treatment for alcohol dependence. He was discharged after three days to continue treatment in AA and in outpatient counseling. Outpatient records reveal Applicant attended two AA meetings per week as well as outpatient sessions through mid June 1993, which helped him remain abstinent.

Following the birth of his second child in August 1993, Applicant began to drink beer and blackberry brandy as he was upset over family interference (primarily by his mother) in his affairs. After drinking heavily for several days, Applicant returned to facility X in August 1993 for detoxification. He displayed a positive attitude toward recovery, but also considerable depression. He was given a guarded prognosis at discharge four days later and directed to outpatient counseling. Applicant resumed his outpatient sessions in early September 1993, and continued in AA. He had not found an AA sponsor and had reduced the frequency of his AA attendance by December 1993. Later that month, he and his counselor mutually agreed to terminate outpatient sessions.

After six months of sobriety, Applicant had another incident of binge drinking in February 1994 after his wife was hospitalized due to illness. Unable to stop drinking after three days of consuming a quart of brandy per day, Applicant again sought detoxification at facility X. Intoxicated on admission, he was discharged after three days in good condition, but his prognosis for recovery from alcohol dependence was assessed as guarded, due in part to his hesitancy to obtain an AA sponsor, his history of complacency about his alcohol problem after significant periods of sobriety, and his detachment from his feelings. Applicant attended outpatient counseling sessions from February 23, 1994, to May 25, 1994, in addition to two to four AA meetings per week. He also obtained a sponsor in AA. In the assessment of his outpatient counselor, he acquired some insight into recognizing the negative thinking and distinctive behaviors which led to relapse.

Applicant became complacent as his sobriety lengthened to the point where he did not believe he was an alcoholic. His attendance at AA slacked off and by arch 1995, he stopped going to meetings. After he picked up that first drink in May

1995, he drank a quart per day for the next five days. Given an ultimatum by his spouse to get treatment or lose his marriage, Applicant underwent four days of detoxification at facility X for alcohol dependence, continuous. Applicant participated in all groups and showed increased motivation for recovery when at the facility, but he fell into familiar patterns after discharge. While he attended outpatient counseling to August 23, 1995, he was still unable to see that he may be "falling prey to the 'sneaky' part of his 'allergy' (*i.e.*, alcoholism)." He slacked off in his AA attendance the longer he maintained sobriety, going to only two meetings in the six months preceding his next detoxification in February 1997.

After about 20 months of sobriety, Applicant, thinking he could drink a beer or two safely, consumed alcohol for about six days straight in February 1997. With his spouse very upset about the relapse, Applicant entered facility X for his sixth detoxification. He was intoxicated on admission and assessed as having very limited insight into relapse dynamics. After three days, he was discharged with a guarded prognosis to continue with the facility's outpatient counseling and five to seven AA meetings weekly.

With the aid of this counseling as well as AA, and antidepressant medication, Applicant managed to remain alcohol-free for at least two years of the next three.[(1)] After his father-in-law's heart attack triggered painful memories of his own father's death, Applicant in February 2000 consumed up to a quart of vodka daily for about four days. Applicant returned to facility X for his seventh detoxification. He elected to leave the facility early to attend outpatient counseling and was discharged with a diagnosis on Axis I of alcohol dependence and major depression. Applicant did not follow through with recommended aftercare, although he managed to remain alcohol-free until June 2000. Laid off from his job, Applicant drank a quart of vodka per day for three or four days in early June 2000 and sought detoxification at facility X to deal with the physical shakes caused by his drinking. After three days, he elected to leave treatment.

Not involved with AA or any other support organization as of November 2000, Applicant fell ill for a few days. Fearing he had a serious illness, Applicant went out and purchased vodka rather than contact his primary physician. Realizing he was on the verge of relapse, he sought admission to facility X, but was advised he would not be admitted without indication that he had been drinking to intoxication. Awaiting approval of his efforts to gain admission, Applicant consumed a quart of vodka per day for about four days. When admitted for detoxification in late November 2000, Applicant gave no reason for the relapse other than he felt like drinking. While it was suggested that he pursue a 30-day inpatient rehabilitation program, Applicant feared loss of his new job with his present employer, so he elected to continue his recovery through AA alone after discharge from facility X in early December 2000.[(2)]

With his last relapse in November 2000, Applicant realized for the first time that he had caused his family significant pain. Although he began to attend AA immediately on his discharge, he stood on the sidelines at meetings, and initially displayed a "why me" attitude. After about a month, he obtained a home group and AA sponsor with sixteen years of sobriety. Over the past two years, Applicant has been an active participant in the AA fellowship, attending three or four AA meetings per week, contacting his sponsor regularly (about daily), and working the AA steps. As of May 2003, Applicant had completed all twelve steps with the exception of making a moral inventory (step 4) and admitting to self and another the exact nature of his wrongs (step 5). Applicant's sponsor has allowed him to delay completion of these steps until July 2003 because Applicant has been unable to focus sufficiently on himself due to family and job obligations and problems with a home improvement construction project on his residence. In the opinion of his sponsor, Applicant is very disciplined in his approach to AA and he has developed the coping skills to remain sober.

Abstinent from alcohol since November 30, 2000, Applicant intends to continue his affiliation with AA in the future. He has made a personal commitment to himself to adhere to the AA tenets, as he realizes he cannot safely drink alcohol in the future. Applicant has a two-year AA medallion that he keeps with him to remind him to take one day at a time. An avid motorcyclist, Applicant socializes with other AA members who share his interest (including his sponsor). Applicant leaves those motorcycle rallies where alcohol is present. Applicant has been offered alcohol by those individuals who are unaware of his alcohol problem, including just a few days before his hearing when a friend not in AA asked him whether he wanted a beer. Applicant has declined the offers. The thought "may have crossed [his] mind" to drink since late November 2000, but he has coped by calling his sponsor or someone in the AA program.

As of May 2003, Applicant's depression was well-controlled with antidepressant medication. In the opinion of his primary physician, Applicant should "continue to do well if he maintains his Alcoholics Anonymous program, and

remains on his medication for depression."

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 required overall common sense determination. 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 guideline may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. See Directive 5220.6, Enclosure 2, Section E2.2.4.

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

Alcohol Consumption

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

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

E2.A7.1.2.3. Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence

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

E2.A7.1.2.6. Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program

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

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

E2.A7.1.3.4. Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or 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.

Under 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 SOR. 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 potentially disqualifying conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. *See* Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

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

The excessive consumption of alcohol raises significant 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. A social drinker from his teens, Applicant began to have a problem with alcohol in the 1980s, especially after the death of his father in 1988. When family members began to express concerns about his consumption, he sought detoxification at a local alcohol treatment facility in September 1991 where he was diagnosed as alcohol dependent. He followed up with two weeks of outpatient counseling and AA, but gained little insight into his alcoholism. Able to maintain sobriety for sustained periods, Applicant gradually drifted away from AA and he eventually relapsed into serious binge drinking leading him to readmit himself for detoxification on eight more occasions over the next nine years. The magnitude of his alcohol problem is evident in his decision to purchase and eventually consume vodka rather than contact his personal physician when he thought he had a serious illness in November 2000. Under the adjudicative guideline pertinent to alcohol consumption, disqualifying conditions E2.A7.1.2.3. (diagnosis by a credentialed medical professional of alcohol dependence), E2.A7.1.2.5. (habitual consumption of alcohol to the point of impaired judgment), and E2.A7.1.2.6. (consumption of alcohol, subsequent to a diagnosis of alcoholism and following completion of an alcohol rehabilitation program) are most pertinent in evaluating Applicant's current security suitability.[(3)]

At discharge from his last detoxification in early December 2000, Applicant was given a guarded prognosis for recovery from his diagnosed alcohol dependence. Under mitigating condition E2.A7.1.3.4., following a diagnosis of alcohol abuse or alcohol dependence, an applicant must successfully complete inpatient or outpatient rehabilitation along with aftercare requirements, participate frequently in meetings of AA or a similar organization, abstain from alcohol for a period of at least twelve 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. Clearly, Applicant satisfies the AA and abstention requirements. As confirmed by the testimony of his sponsor, Applicant has been actively involved in AA for at least the last two years and he has been alcohol-free since November 30, 2000. While he has complied with the AA component of his aftercare, he elected not to pursue the recommended outpatient counseling. His recent detoxification without the individual counseling component does not fulfill the alcohol treatment program requirement.

Applicant's failure to satisfy all the requirements of E2.A7.1.3.4. does not necessarily mandate an adverse outcome, although the evidence of reform must be compelling to deviate from the Directive's adjudicative guidelines. Applicant has chosen to rely solely on the AA fellowship to deal with his alcoholism. In requiring frequent participation in AA, the Government recognizes the valuable support AA can provide to an alcoholic in his or her ongoing recovery from

addiction. Given his history of relapse followed by periods of abstention as long as two years, with exposure to AA in the past,[(4)] Applicant has a particularly heavy burden to demonstrate his present situation (including his AA participation) is different and he can be counted on to continue to enjoy the sobriety he has maintained since November 30, 2000. The quality of Applicant's current participation in AA leads me to conclude there is little risk, if any, of another relapse. Applicant's sponsor and another friend in the AA fellowship attest to having witnessed a transformation in Applicant's attitude toward the program in the last two years.

For the first few months following his December 2000 discharge from detoxification, Applicant displayed a "why me" posture as he stayed on the sidelines at AA meetings. He also exhibited less than complete candor about his drinking when interviewed by a Defense Security Service agent in September 2001, telling the agent that he poured a drink without consuming it when he feared health problems in November 2001. (Ex. 2). While the evidence is uncontested that Applicant did not consume the vodka until after facility X advised he had to be intoxicated for admission, he eventually drank the bottle. His failure to inform the DSS agent of this consumption is inconsistent with the honesty demanded of AA participants. However, over the past two years he has become an active participant and regular attendee (three or four times per week), involved in setting up AA meetings, sharing with others at those meetings, helping others in their sobriety, contacting his sponsor regularly. Applicant's sponsor, who has sixteen years of sobriety, testified Applicant has developed the coping skills needed to remain sober.

There is demonstrable evidence that Applicant now finds in the AA fellowship the support he needs to cope with stresses at work and home. Facing the potential denial of his security clearance due to his admitted abusive relationship with alcohol for more than ten years, Applicant did not turn to drinking but called his sponsor. He has made positive changes in his behavior supportive of sobriety (*see* E2.A7.1.3.3.), by associating with others involved in AA outside of meetings and avoiding situations (like motorcycle rallies) where alcohol is present. Applicant's keeping of his two-year AA medallion on his person is tangible evidence of a genuine commitment to recovery through AA. At his hearing, Applicant displayed insight into why AA did not work for him in the past ("I guess I was living what AA has taught me is a dry drunk, meaning that without putting the steps into your life without changing who you are that you carry that baggage around with you inside." *See* Tr. p. 80). Exhibiting an understanding of the symptomatology of alcoholism, Applicant described alcohol as a poison for him, and testified credibly to his present two and a half years of sobriety being "not an awful long time, not compared to the years that [he] was drinking. But [he] also learned that [he has] today and the best [he] can do is today." (*See* Tr. p. 83). Although Applicant's primary care physician has not treated him for alcoholism, he is aware of Applicant's alcohol problems, his repeated relapses after detoxification, and Applicant's depression and bouts with anxiety, for which the physician prescribed psychotropic medications. In this medical professional's opinion, Applicant's depression is "well controlled and he is free of alcoholism for two and a half years. [Applicant] should continue to do well if he maintains his Alcoholics Anonymous program, and remains on his medication for depression." (Ex. D).[(5)]

As acknowledged by Applicant and his sponsor, there is no absolute guarantee against relapse. While the risk of relapse is regarded as unlikely, given Applicant's commitment to AA, by history Applicant has shown good judgment in limiting the extent of relapse by seeking treatment. Any relapse is likely to lead to a strengthening of his resolve to recover through AA. Favorable findings are warranted as to subparagraphs 1.a., 1.b., 1.c. and 1.d. of the SOR.

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

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 a security clearance for Applicant.

Elizabeth M. Matchinski

Administrative Judge

1. Treatment records of the February 2000 detoxification indicate, "[Applicant] relapsed three to four days ago and is now drinking up to a quart of vodka. Prior to that, he had been sober for two years." (Ex. 4).There is a three-year time span between his February 1997 and February 2000 detoxifications. He was apparently sober for two years during that time span.

2. The records of Applicant's treatment at facility X in November/December 2000 are not consistent regarding the extent of Applicant's most recent relapse. The discharge summary indicates Applicant relapsed immediately into drinking moderate amounts of vodka after his June 2000 detoxification, but also that he had been drinking as of the present admission only for two to three days at most. However, his medical history taken during that November 2000 admission indicates Applicant had relapsed a week ago (a quart of vodka per day) and he had otherwise been sober since his last discharge. *See* Ex.4.

3. I am not persuaded by the Government's contention that E2.A7.1.2.1. (alcohol-related incidents away from work) applies on the basis of Applicant having missed work due to drinking. While Applicant admits some of his absences from work were due to his alcohol consumption, absenteeism is not the type of conduct contemplated in E2.A7.1.2.1. There is no evidence Applicant has ever driven a motor vehicle while legally impaired, ever physically assaulted another person while drunk, or engaged in any other type of criminal incident related to alcohol use. There is no indication Applicant's absences due to alcohol were in excess of allowable limits or that alcohol negatively impacted his work performance.

4. Applicant attended a couple of meetings in October 1990, but exposure of any significant duration did not commence until after his first detoxification at facility X in September 199l.

5. The physician's comment as to Applicant being free of alcoholism is not taken as an assessment that Applicant is cured, but that there has been no relapse.