

DATE: May 9, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-27488

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a diagnosed alcoholic with a history of relapses after treatment, who abused alcohol and cocaine as recently as summer 2004. He has been arrested on several occasions for various offenses related to alcohol, including drunk driving in 1997 and 2001, and did not fully disclose those arrests or court-ordered alcohol counseling on his March 2002 security clearance application. Nor did he report his involvement with cocaine until his third interview with a Defense Security Service special agent. Alcohol consumption, criminal conduct, and personal conduct concerns persist. Clearance is denied.

STATEMENT OF THE CASE

On September 25, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons under Guideline J, criminal conduct, Guideline G, alcohol consumption, and Guideline E, personal conduct, 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. [\(1\)](#)

On October 29, 2003, Applicant answered the SOR and requested a hearing before a DOHA administrative judge. The case was assigned to me on October 24, 2004. Pursuant to formal notice of November 5, 2004, a hearing was scheduled for November 23, 2004. At the hearing, 16 government exhibits were admitted and Applicant testified, as reflected in a transcript received on December 3, 2004. On the government's motion and without an objection from Applicant, the SOR was amended to add under Guideline G, alcohol consumption, a new subparagraph, as follows:

2.j. You consumed alcohol to excess in the summer of 2003.

FINDINGS OF FACT

DOHA alleged under Guideline J six criminal incidents that occurred between 1984 and 1998, and which were

committed when Applicant was under the influence of alcohol. A violation of Title 18, Section 1001 of the United States Code was also alleged based on Applicant's alleged falsification of a March 2002 security clearance application (SF 86) by failing to disclose: arrests for assault and battery, abuse of protection order, and malicious destruction of property; use of crack cocaine to at least December 1995; and alcohol counseling from August 2001 to October 2002. These falsifications of the SF 86 were also alleged under Guideline E. Under Guideline G as amended, DOHA alleged seven alcohol-related arrests (including drunk driving in 1997 and 2001 not alleged under Guideline J), ⁽²⁾ excessive consumption of alcohol by Applicant at times from 1974 to 2001 and again in summer 2003, and participation in alcohol counseling from August 2001 to October 2002. Applicant admitted the allegations which he attributed to an alcohol problem, and he cited in mitigation his involvement in AA and completion of relapse prevention treatment in 2003. Applicant's admissions are accepted and incorporated as findings of fact. After a complete review of the evidence, I make the following additional findings:

Applicant is a 43-year-old painter who was employed by a defense contractor from approximately March 2002 to November 2003 when he was laid off on receipt of the SOR. Applicant is subject to recall should he be granted a security clearance.

An admitted alcoholic raised in a dysfunctional family, Applicant started drinking at age 13 in 1974. At times he consumed alcohol excessively ("some heavy black out drinking"). In his late teens, he experimented with marijuana, cocaine, LSD, and any mood-altering substance "[he] could get his hands on." Sometime in his early 20s, he stopped using marijuana and LSD, but he continued to drink alcohol and use cocaine until 2001, the latter whenever he could afford it. In 1984, he was introduced to Alcoholics Anonymous (AA) but was in denial of his alcohol problem. He drifted in and out of personal relationships with females and had legal problems due to his alcohol and drug abuse.

In November 1984, Applicant was charged with trespass on land/dwelling and annoying a person of the opposite sex (the girlfriend with whom he was cohabiting). He was under the influence of alcohol at the time of his arrest. The charge was dismissed in December 1984. In June 1985, his girlfriend locked him out of the house after an argument. Intoxicated at the time, he entered the home by climbing through a basement window. She called the police and had him arrested for breaking and entering a dwelling in the night with the intent to commit a felony. Applicant was charged with unarmed burglary, which was dismissed on motion of the prosecution. In January 1986, he was arrested for violating a restraining order. The charge was dismissed without prejudice.

In December 1995, he was living with a different girlfriend. Early one morning, he got into an argument with her that escalated into physical abuse (kicking her and slapping her). He was under the influence of alcohol and crack cocaine at the time. Responding police arrested him for assault and battery. The following day, his girlfriend again called the police to complain of a violation of a restraining order she had obtained against Applicant. She told the police no fight had taken place on that date, but she wanted him out of her house. In early January 1996, Applicant was charged with assault and battery as well as violation of an abuse prevention order. In March 2003, these charges were nolle prossed (insufficient facts found) and Applicant pleaded guilty to the earlier assault and battery. He was sentenced to one year supervised probation with a fee, to random urinalyses, domestic violence counseling as recommended, AA meetings, and to a fine and costs of \$200. Applicant failed to report to probation or pay the fine and an arrest warrant was issued in March 1997. His probation was terminated in June 1998 based on his compliance with the terms of probation.

After drinking ten beers and some hard liquor at a bar in September 1997, Applicant scraped a guardrail on the highway. Realizing he was too drunk to drive, he stopped the car against the guardrail and went to sleep, leaving the keys in the ignition. He was found by the police who arrested him for driving under the influence (DUI) with a blood alcohol content of .21%. His operator's license was suspended, and he was ordered to attend drunk driving school and fined in excess of \$400. His license was restored only after he attended alcohol counseling for two to three months in 1998 as well as AA.

In November 1998, Applicant got into an altercation with two men at a local café. Highly intoxicated, Applicant ripped a sign out of the ground outside of the premises. Local police placed him in protective custody for his own safety, and charged him with malicious destruction of property \$250 or less. His case was continued without a finding to August 1999, provided he attended AA at least twice weekly and paid \$35 to a witness/victim fund.

In March 2001, Applicant was pulled over for running a red light after he had consumed four or five beers. Arrested for DUI, Applicant refused to submit to a breath test and his operator's license was automatically suspended for six months. He was ordered to pay \$400 to charity and to attend alcohol education classes. Applicant received alcohol counseling from August 9, 2001 to October 11, 2002, at a local alcohol treatment facility.

At the time of his arrest for DUI, Applicant was living with a girlfriend by whom he has two children. She also drank heavily. Two days after his arrest, Applicant went to AA on his own and decided to stop drinking and using cocaine. Free from illicit drugs since March 2001 and alcohol since July 2001, Applicant moved out of the house in September 2001 when she refused to cease her consumption.

In conjunction with his application for employment with the defense contractor, Applicant executed a security clearance application (SF 86) on March 25, 2002. He disclosed his two DUI arrests but omitted his other offenses, his involvement with cocaine to March 2001, and his alcohol counseling, because he wanted to put his past behind him.

On May 6, 2002, Applicant was interviewed by a special agent of the Defense Security Service (DSS) about his drunk driving offenses and alcohol consumption. Applicant admitted there had been times where he drank every day and in excessive amounts. He denied any alcohol consumption since July 2001. With the help of AA, which he was attending three to seven times weekly, he intended to refrain from any alcohol in the future. Applicant did not mention his other arrests or his illegal drug involvement.

On July 9, 2002, the DSS agent interviewed Applicant about his other offenses and failure to report them on his SF 86. Applicant attributed most of the offenses, including the domestic incidents with former girlfriends, to his intoxicated state. Applicant attributed his omission of all but the DUI offenses from his SF 86 to his failure to recall them at the time. He added that since he had stopped drinking in July 2001, he had tried to forget his past problems.

Applicant remained alcohol-free until sometime in the first half of 2003, when because of personal relationship difficulties he relapsed into cocaine, heroin, and alcohol use.⁽³⁾ With his use of alcohol (up to a quart of liquor daily) and illegal drugs (\$100 worth of crack cocaine daily when he could afford it and two bags of heroin weekly) out of control, Applicant began to exhibit depression and suicidal ideation. In July 2003, he was admitted as an inpatient for treatment of diagnosed major depression, mild, recurrent, substance induced mood disorder, and polysubstance dependence. After a three-day successful detoxification, Applicant was discharged into an affiliated residential partial hospitalization program to work on relapse prevention.

For ten days in July 2003, Applicant was treated in the boarding program of the facility where he participated in all treatment modalities and demonstrated significant progress in meeting his treatment goals, including abstaining from chemicals of abuse and identifying relapse triggers. Discharged with Axis I diagnoses of alcohol dependence, cocaine dependence, opioid dependence, and major depression, Applicant exhibited a positive attitude toward his recovery with follow-up attendance at five to seven AA meetings weekly. He attended AA regularly after his discharge and obtained a sponsor.

On December 22, 2003, Applicant discussed his recent relapse with the DSS agent. Admitting he had continued to drink alcohol and use cocaine whenever he could afford it until March 2001, Applicant claimed he had been sober until late June 2003 when he relapsed using alcohol and cocaine for two or three days until he entered a five-day detoxification program, followed by three days of inpatient treatment in a hospital and then ten days in a residential rehabilitation program. Applicant described himself as a recovering alcoholic and indicated he was attending AA daily. He expressed no plan to use cocaine or alcohol again.

In summer 2004, the woman he had been dating since before his last relapse informed him she did not want a serious relationship. Applicant coped with the emotional pain by drifting away from AA. He turned to alcohol to self-medicate. After drinking at a bar, he ended up "taking a good run," drinking nonstop for a couple of days, until he entered another five-day detoxification program. On the night of his relapse, he also used crack cocaine that he bought off a person on the street.

After his detoxification, Applicant resumed attendance at AA meetings from two to seven times weekly. As of

November 2004, he was working on the third step of the 12-step AA program. Applicant socializes primarily with five good friends who are also involved in AA. Applicant realizes he cannot take that first drink. He was also learning to deal with an anger problem in ways other than resorting to the bottle.

Unemployed for about six months after he was laid off from his job with the defense contractor, Applicant managed to secure contractor work at the facility as a painter until August 2004. In early November 2004, he started working as a truck driver doing mechanical repairs on trucks for a commercial excavation company. He hopes to obtain counseling for his alcohol problem once his insurance is effective.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Concerning the evidence as a whole, the following adjudicative guidelines are most pertinent to this case:

Alcohol Consumption. 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.A7.1.1.)

Criminal Conduct. A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. (¶ E2.A10.1.1.)

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

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of the Applicant, I conclude the following with respect to Guidelines G, J, and E: ⁽⁴⁾

Applicant has a history of binge drinking to excess from his teenage years. His alcohol abuse affected his personal relationships, and he was arrested for the following offenses committed against his girlfriends: trespass in November 1984, breaking and entering in the night in June 1985, violating a restraining order in January 1986, assault and battery and violating an abuse prevention order in December 1995. In November 1998, he was placed in protective custody because of his intoxicated state after he yanked a parking sign out of the ground in anger. He also has two drunk driving offenses of record, in September 1997 and arch 2001. After each incident, he attended alcohol counseling and AA. He managed to remain abstinent while in counseling from August 2001 to October 2002, and for a few months thereafter, but turned to alcohol, and then to cocaine and heroin, to cope with the pain caused by relationship difficulties with a girlfriend. Just prior to his inpatient admission for depression and suicidal ideation in July 2003, he was drinking a quart

of liquor daily, smoking crack cocaine daily, and using two bags of heroin a week. ⁽⁵⁾ Exhibiting depression and suicidal ideation, his roommate brought him to a local hospital where he was referred to another facility for psychiatric treatment. To his credit, Applicant participated actively during his brief stay and then in the partial hospitalization program where he was medically diagnosed as dependent on alcohol, cocaine, and opioids. He followed up with AA, obtained a sponsor and attended meetings regularly. Yet, his AA affiliation was not enough to prevent another relapse in summer 2004, as he again abused alcohol and cocaine to medicate the pain caused by the failure of a personal relationship. Under Guideline G, alcohol consumption, four disqualifying conditions (DC) apply: E2.A7.1.2.1. *Alcohol-related incidents away from work, such as driving under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use*; E2.A7.1.2.3. *Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*; E2.A7.1.2.5. *Habitual or binge consumption of alcohol to the point of impaired judgment*; and 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*.

Given the greater risk of relapse associated with alcohol dependence--proven here by Applicant's relapses into alcohol and illegal drug abuse in 2003 and 2004--the government needs adequate assurance that the alcohol abuse is not likely to recur. Mitigating condition (MC) E2.A7.1.3.4 provides: *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 a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*. Applicant successfully completed the partial hospitalization program in July 2003. Despite this counseling, he turned to alcohol and cocaine to cope with the pain of a failed relationship a year later. His decision to go to a bar rather than call his AA sponsor raises doubts about the strength of his reform and exposes an ongoing vulnerability to self-medicate with alcohol despite all he has learned about alcohol and relapse triggers. While he showed good judgment in pursuing detoxification after his latest relapse, and he is sincere in his intent to not use alcohol or illegal drugs in the future, it is too soon to conclude his alcohol abuse is safely of the past. SOR ¶¶ 2.a., 2.b., 2.c., 2.d., 2.e., ⁽⁶⁾ 2.f., 2.g., 2.h., 2.i., and 2.j. (as amended) are resolved against him.

Criminal conduct concerns are also raised by Applicant's alcohol-related offenses. Under Guideline J, DC E2.A10.1.2.1. *Allegations or admission of criminal conduct, regardless of whether the person was formally charged*, and E2.A10.1.2.2. *A single serious crime or multiple lesser offenses*, apply. With the exception of the Title 18 violation discussed under Guideline E, below, the criminal acts which form the basis of the government's case under Guideline J are not recent (*see* MC E2.A10.1.3.1. *The criminal behavior was not recent*), and they are attributed to anger management and alcohol problems rather than a criminal predisposition. As previously noted, neither the 1997 nor 2001 drunk driving offenses were alleged under Guideline J. Nonetheless, future criminal behavior cannot be ruled out in light of the concerns about his alcohol consumption. After drinking at the bar in June/July 2004, Applicant ingested crack cocaine that he bought off a person on the street. Future criminal activity cannot be ruled out where there remains a risk of abusive drinking. SOR ¶¶ 1.a., 1.b., 1.c., 1.d., 1.e., and 1.f. are concluded against him.

Concerning Guideline E, when Applicant applied for his security clearance in March 2002, he disclosed only his DUI offenses on his SF 86. He did not list his arrests for assault and battery, violation of restraining/prevention orders, or malicious destruction. Nor did he disclose his involvement with cocaine or his alcohol counseling, including the counseling that was current as of his completion of the clearance application. Under the personal conduct guideline DC E2.A5.1.2.2., *The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*, is potentially security disqualifying.

The personal conduct concerns generated by intentional concealment may be mitigated where there is a prompt good-faith effort to correct the falsification before being confronted with the facts. (MC E2.A5.1.3.3.) Approximately six weeks after he executed his SF 86, he had the opportunity to correct the record in a DSS interview of May 2002. Applicant indicated he had been required to participate in court-ordered counseling after his DUI offenses, and his timely rectification warrants a favorable finding as to ¶ 3.c. However, he did not volunteer any information about his other offenses or his illegal drug use. Re-interviewed in July 2002 to discuss the other arrests he had not previously

mentioned, Applicant was candid about his omitted arrests, but the disclosures were prompted by the DSS inquiry. Moreover, Applicant claimed he had not listed all his arrests on his SF 86 because he had not remembered them, having made an effort to forget his past problems when he was drinking too much. Given the details he provided about the offenses during his second interview, it is not credible that he failed to recall them at the time he completed his security clearance application or during his first interview. Furthermore, Applicant again did not disclose that he had used cocaine to as recently as March 2001. (7) Instead, he reviewed his application with the agent and vouched for the accuracy of the information other than the arrests, including his negative response to question 27 regarding the use of illegal drugs in the last seven years.

Although Applicant eventually admitted he had "sampled" marijuana, cocaine, and LSD as a youth, continued to use cocaine when he could afford it up until arch 2001, and had relapsed into cocaine abuse in June 2003, it was not until he was interviewed in December 2003, after the SOR had been issued. The government can ill afford to have individuals decide for themselves the timing and extent of disclosure. SOR ¶¶ 3.a. and 3.b. are resolved against him as Applicant's rectification of these deliberate omissions was too belated to overcome the personal conduct concerns. Furthermore, an adverse finding is returned as to ¶ 1.g., as Applicant committed felonious criminal conduct by knowingly falsifying his SF 86. Title 18, Section 1001 of the United States Code provides:

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully: (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both.

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 J: AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: Against the Applicant

Paragraph 2. Guideline G (as amended): AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: Against the Applicant

Subparagraph 2.c: Against the Applicant

Subparagraph 2.d: Against the Applicant

Subparagraph 2.e: Against the Applicant

Subparagraph 2.f: Against the Applicant

Subparagraph 2.g: Against the Applicant

Subparagraph 2.h: Against the Applicant

Subparagraph 2.i: Against the Applicant

Subparagraph 2.j: Against the Applicant

Paragraph 3. Guideline E: AGAINST THE APPLICANT

Subparagraph 3.a: Against the Applicant

Subparagraph 3.b: Against 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. Clearance is denied.

Elizabeth M. Matchinski

Administrative Judge

1. ' "" ""
2. The drunk driving offenses were not alleged under the criminal conduct guideline, although driving under the influence is a criminal offense. Other criminal incidents where alcohol was involved but Applicant was not charged with an alcohol offense were alleged under both guidelines J and G. Similarly, the government did not allege the 1995 assault and battery under guideline G even though it was alleged under Guideline J to be alcohol-related and he was ordered to attend AA. Of the two alleged criminal assault arrests (SOR ¶¶ 1.d. and 1.e.) only the police report of the first arrest indicates Applicant was under the influence.
3. The record is inconsistent as to the length of Applicant's sobriety. Applicant told a Defense Security Service (DSS) special agent on May 6, 2002, that he had not consumed any alcohol since July 2001. (Ex. 14) In December 2003, he told the agent he had stayed sober from March 2001 to late June 2003, when he relapsed into cocaine and alcohol use for two or three days. (Ex. 16) The records of his psychiatric admission in July 2003 indicate his longest period of sobriety was 18 months (Ex. 12) while the records of his subsequent partial hospitalization indicate his longest abstinence was for eight months in the 1990s, and he was drinking a quart of liquor per day, smoking crack cocaine daily, and using two bags of heroin weekly before his admission. (Ex. 13)
4. Although Applicant has admitted to having an anger problem, the criminal acts alleged in the SOR were committed when Applicant was under the influence. The primary concern, as conceded by the government at the hearing, is Applicant's drinking.
5. Applicant, who has a history of using illegal drugs while under the influence of alcohol, was diagnosed as suffering from cocaine dependence and opioid dependence in July 2003. Although such drug use falls within Guideline H, the government did not allege drug involvement security concerns, presumably because Applicant's primary problem is alcohol.
6. It is not clear that Applicant was arrested twice for assault and battery on the same day in December 1995. The police report indicating Applicant had consumed alcohol and crack cocaine refers to the incident in ¶ 1.d., which was not alleged under Guideline G. The administrative complaint is not to be measured against a standard of perfection. To the

extent that Applicant was found by the police to be under the influence of alcohol on the day in question, ¶ 2.e. is resolved against him.

7. DOHA alleged Applicant concealed cocaine use that continued to at least December 1995. It is noted that the interview in which Applicant admitted using cocaine up to March 2001 took place in December 2003, after the SOR was issued.