

DATE: April 2, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-13793

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Depressed about the breakup of his marriage, Applicant abused alcohol over the 1994/95 time frame. After he was arrested for threatening the boyfriend of his spouse in May 1994, he underwent treatment for a condition diagnosed as major depression, alcohol abuse episodic and personality disorder. With his depression successfully treated through a combination of outpatient treatment and medication, Applicant is no longer at risk to drink to excess. As of February 2003, Applicant's mood was euthymic and his behavior appropriate. Candid about his criminal record and outpatient counseling during the investigation and adjudication of his clearance, Applicant did not engage in any deliberate misrepresentation. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated September 24, 2002, to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on excessive alcohol consumption (guideline G) with continued drinking after treatment for a condition diagnosed, in part, as alcohol abuse episodic, and on personal conduct (guideline E) concerns related to failure to disclose on his June 2000 security clearance application and in June 2002 response to interrogatories that he had received alcohol-related counseling.

On October 14, 2002, Applicant responded to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge. The case was assigned to me accordingly on December 3, 2002. Pursuant to formal notice dated December 16, 2002, the hearing was scheduled for January 9, 2003.

At the hearing, which was held as scheduled, eleven documentary exhibits were admitted into evidence, seven for the Government and four for the Applicant. Testimony was taken from the Applicant as well as from his brother and his sister-in-law. A transcript of the proceedings was received on January 17, 2003.

The record was ordered held open following the hearing until February 3, 2002, for Applicant to submit evidence of a medical evaluation scheduled for January 18, 2003. On February 18, 2003, a medical professional submitted on Applicant's behalf through Department Counsel a recent assessment of Applicant's current mental status. A copy of this professional evaluation was received by the undersigned on March 3, 2003. On receipt of the evaluating physician's curriculum vitae on March 7, 2003, Department Counsel was given until March 14, 2003, to object to the admission of the assessment and curriculum vitae. No objections having been received, the documents were marked collectively and admitted as Applicant exhibit E despite their late submission.⁽¹⁾

FINDINGS OF FACT

After a thorough review of the evidence, and on due consideration of the same, I render the following findings of fact:

Applicant is a 36-year-old divorced male enrolled in a four-year machinist apprenticeship program at a defense contractor firm (company A). Circa 1993, Applicant and his spouse, who had two small children, began to experience marital difficulties, exacerbated in part by Applicant's depression, for which he was being treated with Prozac and Zoloft medication. That summer, Applicant and his spouse began joint counseling in an effort to work through their marital difficulties.

In mid-March 1994, after six to eight months of joint counseling, Applicant returned home early from work one day and found his wife in bed with another man. Applicant did not confront this man or his spouse with any physical threat or violence, although he punched the front door in anger. Applicant's depression became more severe thereafter. In an effort to forget his sorrows, he drank alcohol to excess, and began to stalk his spouse's boyfriend.

On an occasion in mid-April 1994, Applicant appeared at the workplace of his spouse's boyfriend, armed with a knife with a ten to twelve-inch blade. Confronted by a security guard, Applicant displayed the knife to the guard, and he told him no one would be injured if he was allowed to leave. After Applicant fled the premises, the security guard reported the incident to the local police. Content with scaring his wife's boyfriend, Applicant followed the boyfriend to his place of employment for the next week. Applicant's spouse and her boyfriend expressed their fears for the boyfriend's safety, Applicant having expressed to his wife his intent to kill her boyfriend and then himself, as he had nothing left to live for, given their pending divorce. Five days after the incident with the knife, the boyfriend complained to the police that Applicant had been parked in the vicinity of the boyfriend's workplace. A warrant was subsequently secured for Applicant's arrest.

In early May 1994, Applicant was arrested and charged with possession of a deadly weapon, simple trespass, stalking second degree, and threatening. Placed under house arrest, the state revoked his gaming license and Applicant was terminated from his job at a local casino. Since she worked at the courthouse, Applicant's sister-in-law was present at Applicant's court appearances. While Applicant presented as somewhat "glazed over" in court, the sister-in-law attributed it to his depression difficulties.⁽²⁾ Pursuant to a plea bargain, Applicant in about August 1994 pleaded guilty to threatening, and was sentenced to a year in jail, suspended, and to two years probation. The remaining charges were dismissed.

At the referral of the court, Applicant on May 24, 1994, commenced outpatient counseling at a local hospital for a condition diagnosed as major depression, alcohol abuse episodic, and personality disorder (not otherwise specified).⁽³⁾ On admission, Applicant was experiencing suicidal ideation and depressive symptoms, including obsessive thoughts. During the course of treatment, which was focused on his depression and parental issues, Applicant continued to abuse alcohol. In mid-November 1994, he was administratively discharged after eight sessions due to lack of further contact. Condition on discharge was noted as improved, with a fair prognosis.⁽⁴⁾

On December 22, 1994, Applicant was readmitted to the hospital's outpatient counseling program due to a resurgence of suicidal ideation. Diagnosed as suffering from major depression and personality disorder (not otherwise specified),

Applicant was prescribed Zoloft medication, which was discontinued due to stomach upset. He was advised not to drink alcohol while taking the antidepressant medication. Listed foci of treatment were parenting issues, alcohol abuse, and suicidal ideation. After six sessions, Applicant was administratively discharged from the program on May 18, 1995, because of a lack of further contact. With minor progress made in his individual sessions, Applicant was given a guarded prognosis at discharge.

Unemployed since his gaming license had been revoked, Applicant in March 1995 got a job as an assistant manager for an automobile oil lubrication company. The following month, he took on a second job, working as a banker accounting for all the concession receipts taken in during minor league baseball games held at a local stadium during the summer months. In late April 1995, his divorce was final.

With obligations at work to fulfill and his personal attention focused on his two children and on his elderly grandmother, with whom he had taken up residence following his marital separation in 1994, Applicant began to experience a decrease in his depressive symptoms. In August 1996, Applicant successfully completed his probation for the 1994 threatening offense, having cooperated with the office of adult probation in all respects.

At the suggestion of his brother (a longtime employee of company A), Applicant applied for a position as a mechanic at the local defense contracting firm in June 2000. In conjunction with that employment, Applicant completed a security clearance application (SF 86) on which he listed his counseling in 1994/95 in response to inquiry concerning mental health related treatment. He did not list his outpatient therapy as alcohol counseling because his treatment focused on his depression. In response to question 26 regarding criminal offenses not otherwise listed in the last seven years, Applicant disclosed his 1994 conviction for threatening. Selected for the position with the defense contractor, Applicant was not allowed to start to work with the company because he did not have a security clearance.

During the summer 2000 baseball season, Applicant had several verbal disagreements with stadium management over the way in which the food service was managed. As a result, the company did not renew his contract for the following summer.

In January 2001, Applicant was terminated from his job at the oil lubrication company after he accidentally failed to properly secure a drain plug in an oil pan, and a car's engine was damaged beyond repair. After working at the local aquarium, Applicant found work at a toothpaste factory in July 2001.

In December 2001, Applicant began seeing his physician for treatment of stomach problems. Circa February 2002, his ex-spouse moved with their children to another state. Depressed about his inability to see his children regularly because of the geographic distance, Applicant was placed on Effexor by his physician in February 2002. He was not referred for any counseling. Applicant took the antidepressant medication for about three months before he discontinued it due to unpleasant side effects.

On March 27, 2002, Applicant was interviewed by a Defense Security Service (DSS) special agent about his criminal record, adverse employment terminations from the casino and the oil lubrication company, his treatment in 1994/95, and compliance with his child support obligations. Applicant admitted he had stalked his then spouse's boyfriend in March/April 1994, for which he had been arrested and convicted. Applicant denied any further legal difficulties. With regard to his treatment for depression in 1994, Applicant indicated he was taking prescribed Prozac and Zoloft as of March 1994 when he caught his wife in bed with another man. He related he began to consume alcohol while taking the medications, which "may have contributed to the poor decisions he made that led to [his] arrest." Applicant indicated he stopped going to his therapy sessions and taking his medication on his own. Applicant volunteered he was taking Effexor, prescribed in February 2002 after he complained of depression. Applicant indicated he was not referred for counseling.

At the request of DOHA, Applicant on June 27, 2002, responded to interrogatories concerning alcohol. Applicant disclosed current consumption of alcoholic beverages, reporting that he might drink three beers a month, a glass or two of wine with dinner and three rum drinks if he goes out with his girlfriend to a local club. Applicant denied drinking to intoxication. Applicant responded negatively to whether he had ever received any medical treatment, counseling or supportive treatment due to his use of alcohol, as he considered his 1994/95 treatment to have been for depression, suicidal thoughts and issues related to the dissolution of the marital relationship.

In search of a more challenging job, Applicant applied for the machinist apprentice program at company A. In conjunction, he completed a new security clearance application (SF 86), on which he responded as he had on his 2000 form. Selected for a slot, Applicant began work at company A in late September 2002 with a "green badge."

Applicant last consumed alcohol in December 2002. He imbibed one drink when out socializing in mid-December 2002 and one glass of wine at Christmas dinner. Applicant intends to continue to consume alcohol in moderation in the future. Applicant and his current girlfriend, who he has dated since September 2000, like to go to a local club on Friday and Saturday nights where Applicant may consume as many as three drinks.

Applicant is close to his brother and his brother's family. He is trusted with his brother's children. Neither Applicant's brother nor his sister-in-law thinks Applicant has an alcohol problem.

As of January 2003, Applicant was still residing with his elderly grandmother. He has demonstrated he can be trusted to be responsible in caring for his grandmother and her home, spending his own funds to make needed repairs.

Applicant submitted himself for evaluation by a local psychiatrist on January 28, 2003, February 4, 2003, and February 18, 2003. Applicant's mental status revealed no abnormalities, his thinking was coherent, his mood euthymic and his behavior appropriate. This medical professional does not consider Applicant to be dangerous to himself or others at present.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, I find the following adjudicative guidelines to be most pertinent to this case:

GUIDELINE G

Alcohol Consumption

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.A7.1.2.1. Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use

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

E2.A7.1.3.2. The problem occurred a number of years ago and there is no indication of a recent problem

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

GUIDELINE E

Personal Conduct

E2.A5.1.1. The Concern: 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.A5.1.2. Conditions that could raise a security concern and may be disqualifying also include:

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. (S)

E2.A5.1.3. Conditions that could mitigate security concerns include:

Not applicable.

* * *

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

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

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to guidelines G and E:

The Directive does not prohibit drinking per se. Rather it is the excessive consumption of alcohol which 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. Circa early 1994, Applicant began taking Prozac and Zoloft medication for depression. After he discovered his spouse in bed with another man, Applicant began "a long slide down."⁽⁶⁾ He began to consume alcohol while taking prescribed antidepressants, which had a clearly negative impact on his judgment, as evidenced by him stalking his spouse's boyfriend with homicidal and suicidal ideation in April 1994. Following his arrest on charges of possession of a deadly weapon (knife), simple trespass, second degree stalking, and threatening, the court referred him to an outpatient counseling program at a local hospital, where he was diagnosed as suffering from major depression, alcohol abuse episodic, and personality disorder (not otherwise specified). He continued to imbibe alcohol while in treatment, even though he had been advised by treating personnel not to drink while taking antidepressants. While the record is silent as to the quantity or frequency of alcohol consumed by Applicant during the April 1994 time frame when he threatened his spouse's boyfriend, he attributed his behavior to alcohol.⁽⁷⁾ Disqualifying condition (DC) E2.A7.1.2.1., alcohol-related incidents away from work . . . other criminal incidents related to alcohol use, must be considered in assessing his current security suitability. Although Applicant was diagnosed as suffering from alcohol abuse, episodic, on discharge from his initial outpatient counseling in November 1994, it is not clear whether the therapist who signed the discharge form was a licensed clinical social worker (*see* footnote 3) on staff of a recognized alcohol treatment program, which is required for DC E2.A7.1.2.4. to apply.

In mitigation, there is no indication of a recent alcohol abuse problem. Applicant abused alcohol in response to a major psychosocial stressor (dissolution of marriage) in the 1994/95 time frame. His criminal stalking in 1994 is clear indication of a maladaptive pattern of substance use despite adverse consequences. Yet, as confirmed by the diagnosis of major depression and alcohol abuse episodic, Applicant's primary problem was his pre-existing mood disorder which contributed to, if not caused, his abusive use of alcohol.⁽⁸⁾ Although Applicant's treating therapist reported Applicant continued to abuse alcohol during his second admission to the hospital's outpatient treatment program, the diagnosis at discharge was major depression and personality disorder. There was no diagnosis of an alcohol abuse problem.

As Applicant's divorce became final and he began to focus on his children, Applicant managed to gain the psychological stability needed to prevent a relapse of abusive drinking. Since 1995, Applicant has demonstrated an ability to drink alcohol in moderation, without any adverse consequences. While he continues to suffer from depression on occasion, most recently in February 2002 when his ex-wife relocated with their children to another state, Applicant did not attempt to self-medicate with alcohol. To his credit, he informed his physician, who prescribed Effexor, which Applicant took for about three months. Involved in a personal relationship since September 2000 and close to his brother and his sister-in-law, Applicant has a support network in place to assist him should he feel depressed in the future. In January and February 2003, Applicant submitted himself for a mental health evaluation to a credentialed medical professional. This psychiatrist found Applicant's mood to be euthymic and his behavior appropriate. Although Applicant continues to consume alcohol, there is nothing about the quantity or circumstances of his drinking which indicate either a present alcohol abuse problem or difficulties coping with his depression. Subparagraphs 1.a., 1.b., 1.c., and 1.d. are resolved in Applicant's favor.

The Government's case under guideline E, personal conduct, is based on Applicant's failure to report, on his June 2000 security clearance application or in response to June 2002 interrogatories, that his outpatient counseling at the local hospital in 1994/95 was alcohol-related. If deliberate, the omission of material information from a questionnaire used to determine security clearance eligibility raises significant personal conduct concerns (*see* DC E2.A5.1.2.2.). It is undisputed that he responded "No" to question 30 ["In the last 7 years, has your use of alcoholic beverages (such as liquor, beer, wine) resulted in any alcohol-related treatment or counseling (such as for alcohol abuse or alcoholism)? Do not repeat information reported in module 21 on form SF 86 (Your Medical Record)"].⁽⁹⁾ Yet, Applicant has consistently denied any intentional falsification, citing his disclosure of the treatment in response to inquiry into mental health counseling (question 19 on the SF 86). Security clearance applicants are advised not to repeat under question 30 information reported in response to the question into one's medical record. Assuming this relieves one only of the obligation of repeating the detailed information reported in response to question 19, Applicant testified credibly he was unaware of the diagnosis of alcohol abuse episodic. Applicant presented for treatment as a result of suicidal ideation and depressive symptoms, including obsessive thoughts. While the discharge summary of Applicant's second admission to the outpatient counseling indicates "[p]arenting issues, alcohol abuse, and suicidal ideation were primary foci of

treatment with minor progress," Applicant was not diagnosed with an alcohol abuse problem during that admission. Applicant has admitted that his therapist advised him not to consume alcohol while taking prescribed antidepressants, but with scant information of record about the counseling sessions, I am unable to conclude the treatment was sufficiently focused on alcohol to where Applicant was required to respond affirmatively to question 30 on the June 2000 SF 86 or question 2 on the June 2002 interrogatories. Subparagraphs 2.a. and 2.b. are thus resolved in Applicant's favor.

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

Paragraph 2. Guideline E: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: 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. Although Applicant did not request a further extension, he submitted himself for psychiatric evaluation on January 28, 2003, which was prior to the date set for record closure. While there must be a date set beyond which further submissions will not be considered, the circumstances of this case and the requirement to make a fair and impartial common sense determination based on consideration of all the relevant and material information and the pertinent criteria and adjudication policy (*see* DoD Directive 5220.6 paragraph 6.3) warrant the inclusion of the physician's medical opinion and his curriculum vitae.
2. Applicant's sister-in-law testified credibly at his security clearance hearing in January 2003 that alcohol was not raised during the public criminal proceedings in 1994. (Transcript p. 103).
3. The discharge form was signed by Applicant's therapist, an individual with social worker credentials. Under the present state statute, a person is not allowed to practice clinical social work unless he or she obtains a license. As set forth in Section 20-195n of Chapter 383b, applicants for licensure as a clinical social worker are required to hold a doctorate or master's degree from a social work program accredited by the Council on Social Work Education (or equivalent if educated outside the U.S.), complete 3,000 hours of post-Master's social work experience, at least 100 hours of which must be under professional supervision by a licensed clinical or independent social worker, and pass a required clinical level examination. On or after October 1, 1995, any person certified as an independent social worker prior to October 1, 1995, is deemed licensed as a clinical social worker pursuant to this section, unless they were certified as an independent social worker on or after October 1, 1990. Those certified as independent social workers between October 1, 1990 and October 1, 1995, are required to pass the clinical level examination for licensure. (*See*

Conn. Gen. Stat. Ch. 383b Sec. 20-195n.). There is limited information of record regarding the professional qualifications of Applicant's therapist. From the credentials listed on the respective discharge summaries, it is not clear whether Applicant's therapist was a licensed clinical social worker. On the May 1995 discharge summary, the therapist listed a "CISW" credential. If this denotes status as a certified independent social worker, he would have been deemed licensed as a clinical social worker as of October 1, 1995, unless he acquired status as a certified independent social worker on or after October 1, 1990. In that case, he would have had to pass the required clinical level examination.

4. The discharge summary reflects no prescribed medications at discharge.

5. This factor was considered but found not to apply as Applicant did not deliberately conceal his outpatient counseling at the local hospital in 1994/95.

6. *See* Transcript p. 45.

7. *See* Ex. 5. "I began to drink alcohol while taking the medication and I believe that this may have contributed to the poor decisions I made that led to my arrest."

8. While alcohol can cause depressive symptoms, Applicant's conduct must be assessed in light of his major depression disorder.

9. Question 30 directs one not to report information already disclosed in response to "module 21 on form SF 86 (Your Medical Record)." Module 21 on the same SF 86 concerns felony offenses. Module 19 is the relevant inquiry into medical record information. Acknowledging the potential for confusion, Applicant has indicated he did not list the treatment as alcohol-related because the counseling was for his depression.