DATE: March 31, 2003

In re:

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

Applicant for Security Clearance

ISCR Case No. 02-15935

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Katherine A. Trowbridge, Department Counsel

FOR APPLICANT

Gretchen A. Benolken, Esq.

SYNOPSIS

Applicant presents with a history of alcohol abuse and dependence problems that manifested over a relatively short period in his spanning 1998 and 2000. He accepted counseling and appreciation of a dependence diagnosis he was not previously made aware of and claims almost twenty four months of sustained abstinence, which is buttressed by a favorable prognosis and AA chip commemorating eighteen months of sobriety. Applicant mitigates the Government's alcohol concerns. However, Applicant's admitted misstatements of repeated denials to a DSS investigator in 2001 about his resumed alcohol use are neither extenuated nor mitigated and preclude him from successfully overcoming the adverse trust implications from his misstatements, despite a praiseworthy professional career with his current defense contractor. Clearance is denied.

STATEMENT OF THE CASE

On July 10, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on September 4, 2002, and requested a hearing. The case was assigned to this Administrative Judge on October 8, 2002. Pursuant to notice, a hearing was initially scheduled for October 8, 2002, but continued on Applicant's request to seek counsel. Re-noticed for hearing on December 11, 2002, the hearing was convened as scheduled for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of one rebuttal witness and five exhibits; Applicant relied on four witnesses (including himself) and seven exhibits. The transcript (R.T.) of the proceedings was received on December 23, 2002.

PROCEDURAL ISSUES

Because of the lateness of the hour, the parties were asked for input on available options for completing the closing arguments. Following discussion, the parties agreed to waive oral summations and substitute briefs for their closing arguments. Closing memoranda were timely submitted and were followed by sur-replies and sur-rebuttals from each of the parties. All of the filed memoranda submitted by parties were fully considered in conjunction with the compiled pleading and evidentiary record.

Addressing Applicant's post-evidence request to withdraw and/or amend his responses to conform to his hearing version of his impressions of his January 2001 statements (*see* footnote 17 of Applicant's post-hearing submission) given to the interviewing DSS agent, Applicant's motion comes too late and without a sufficient good cause showing of how (a) he could admit to knowingly and wilfully making misstatements of material fact to a DSS investigator (in violation of 18 U.S.C. Sec. 1001) without remembering what he previously told the DSS agent in his subject interviews or (b) his admissions reflected a manifest misunderstanding of his state of mind in the interviews. Applicant's motion to withdraw and/or amend his responses to the SOR must be denied.

Applicant timely submitted a copy of an AA chip he received at an AA meeting in July 2002, commemorating eighteen months of sobriety. This exhibit was received without objection and is admitted with an assigned exhibit H number.

Additionally, the parties filed timely statements under oath of Applicant and Agent A, respectively, covering the issue raised at the end of the hearing as to who typed exhibit 5 (Applicant's third and final statement given to Agent A). Both are received: the Government's statement is assigned an exhibit identification of six; while Applicant's notarized statement is assigned an exhibit identification of I.

STATEMENT OF FACTS

Applicant is a 46-year old site security manager for a defense contractor who seeks to retain his security clearance.

Summary of Allegations and Responses

Applicant is alleged to have (1) consumed alcohol, at times to excess and to the point of intoxication, to at least December 2000, (2) reported to work with a hangover and late, and/or

took unscheduled time off from work as the result of alcohol use, and to have sought help for his alcohol problem in March 1999 from his employee assistance program (EAP), (3) received treatment from March 1999 to July 1999 from a Dr. A for a condition diagnosed as alcohol dependence, after which he was assigned a good prognosis as long as he continued to abstain from excessive use of alcohol, (4) been counseled in October 1999 at his place of employment for unacceptable job attendance, unscheduled absences (especially on Mondays), and comments from co-workers concerning his reporting to work with the smell of alcohol, (5) been counseled in February 2000 at his place of employment due to his unacceptable job attendance, unscheduled absences (especially on ondays), and comments from co-workers concerning his reporting to work with the smell of alcohol (altogether 9 unplanned personal time-off days), and (6) continued to consume alcohol to at least December 2000, notwithstanding his treatment for alcohol dependence.

Additionally, Applicant is alleged to have (a) falsified material facts in a signed, sworn DSS statement of January 9, 2001, by denying any resumption of alcohol since ending his treatment with Dr. A in about September 1999, falsely failing to disclose his resumption of alcohol consumption after completing his treatment with Dr. A because of stated embarrassment and (b) falsified material facts in an ensuing January 25, 2001 DSS statement by repeating his denials of any relapse since completing his treatment with Dr. A in September 1999, and (c) falsely failed to disclose his resumption of alcohol consumption after completing his treatment with Dr. A, again because of recited embarrassment.

For his response to the SOR, Applicant provided considerable background information about his military service, professional development with his current defense contractor, drinking history and related treatment, and finally his efforts to address the questions posed by the interviewing DSS agent looking into reports of drinking abuses by Applicant. Applicant also provided a list and summary of claimed extenuating and mitigating factors affecting his alleged drinking abuses, false accounts given the DSS agent about his drinking, and regard in which he is held by his

current supervisor and work colleagues. Addressing the specific allegations, Applicant admitted most of them. However, he denied being informed by his health provider (Dr. D) that he was diagnosed as alcohol dependent, to being told by his supervisor in October 1999 (Mr. C) of co-workers complaining about his smelling of alcohol, to taking 9 unplanned days off from work after January 2000 due to alcohol consumption (admitting to only three being related to alcohol), to being directed by Dr. D to abstain from all alcohol consumption. Applicant also claimed his false statements to the DSS investigator in January 2001 were isolated events, never again repeated and voluntarily corrected in an ensuing statement he prepared.

Relevant and Material Factual Findings

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

Applicant enlisted in the US Army in 1973 at the age of 18. Upon completing his military police training, he was granted a security clearance. His assigned duties included security-related assignments for various headquarters buildings. His security clearance was upgraded to top secret in 1977 after he accepted counterintelligence training. Over an eight-year period spanning 1979 and 1987, Applicant worked a number of duty assignments domestic and abroad that involved security-related approvals and inspections.

Upon receiving a honorable discharge from the Army in 1987, Applicant joined his current defense contractor as a special security officer for some of the company's SCI programs. He impressed his superiors enough to be promoted to an industrial security supervisor in 1989. In this position, he was responsible for the company's industrial security program for its entire local facility (which employed over 4,500 employees). Working with a company team of security professionals, he received numerous excellent security ratings in the early and mid 1990s.

Applicant's developed alcohol history

Beginning around 1995, Applicant began experiencing stresses both in his work and in the home. At work, he was privy to a strained professional relationship between his immediate supervisor (Mr. C) and his direct supervisor and FSO (Mr. D). This friction affected Applicant considerably, as he oft-received conflicting assignments from his feuding superiors, with whom he enjoyed good working relationships with. Complicating Applicant's work-related stresses were the personal ones associated with his young son's (born in 1997) moderate birth defect that hampered his physical growth. Applicant and his wife both encountered difficulties coping with their young son's growth limitations.

Applicant assures that before 1997, he was an infrequent drinker who did not drink to excess when he did consume (*see* R.T., at 50-51). The cumulative effect of the work-related and personal stresses in his life changed all of this. Beginning in Spring 1998, Applicant began escalating his drinking frequency and amounts consumed at each sitting. While careful never to drink at work, or come to work under the influence of alcohol, he begin to experience frequent headaches and energy losses. Often he would report to work with a hangover and, on a few occasions, he reported late for work. On several occasions, he took previously unscheduled time off from work, albeit with his supervisor's permission. The physical reactions he experienced from his escalated drinking only compounded his stresses in the work place and at home.

By March 1999, Applicant had come to the stark realization he was abusing alcohol and needed professional help. In turn, he inquired of the availability of assistance from his employee assistance program (EAP), and followed up his inquiry with notice to his supervisor (Mr. C) that he had sought counseling for his drinking (*see* R.T., at 54). Applicant was referred to a Dr. D for alcohol-related counseling and treatment. Dr. D's substance expertise is not clear. The medical information questionnaire (ex. 6) he returned in January 2001 reports his having a PhD, but does not identify his field of discipline, or any area of specialization he might have. Absent any raised questions about his treatment credentials by any of the parties during the presentation of the evidence, however, Dr. D's professional expertise to diagnose and recommend courses of action to address alcohol problems is accepted. While Dr. D's submitted medical questionnaire was later challenged by Applicant as to authorship and signature authenticity (*see* R.T., at 433-34), the questionnaire was neither objected to (*see* R.T., at 10-12) when offered nor discredited by probative evidence. Its contents are entitled to be considered, as such, for weight to assign in juxtaposition to Applicant's understandings of his consultations with Dr. D.

In the questionnaire he submitted to DSS, Dr. D reportedly diagnosed Applicant as alcohol dependent without providing any historical data about Applicant or testing he employed to arrive at his diagnosis. His report indicates, too, that he prescribed abstinence, and not just avoidance of excessive drinking. This is evident explicitly in his answer to question 12, but implicitly as well by his answers to question 16 (recommends AA), question 12 (good prognosis accompanied by Applicant intention to abstain) and question 13 (no risk of defect in judgment from Applicant's condition so long as he remains sober). Much of Dr. D's report, though, is challenged by Applicant. He denies that Dr. D ever told him he was alcohol dependent, or that he should remain abstinent and attend AA if he wanted to get control of his drinking (*see* Applicant's response; R.T., at 58-63). Without a full report from Dr. D, it is more difficult to draw any firm understandings of either Applicant's relationship with Dr. D or the exact consultative advice given Applicant. Prescribed abstinence and recommended AA attendance are generally accepted treatment/sobriety tools of recognized substance abuse providers and could reasonably be expected to be suggested by a qualified treatment counselor like Dr. D is presumed to be. Applicant himself came to the realization that he had a dependence problem that needed addressing in 1998 and 1999. Absent more information from Applicant on the specifics of his alcohol dependence/abuse problem, Dr. D's recitals about his diagnosis and prognosis of Applicant, as well as his reported recommendations and understandings, provide the most plausible explanation of Dr. D's communicated conclusions, recommendations and understandings with Applicant.

To be sure, Dr. D's medical questionnaire, besides being challenged on the identity of the preparer (rejected without more to discredit the genuineness of Dr. D's signature), lacks the clarity essential for accurately gauging the depth and breadth of his opinions and recommendations, and are even questioned . Dr. D is certainly less than clear in specifying whether it was his suggestion or Applicant's to abstain or just avoid drinking to excess (Applicant's claimed understanding). Because of such uncertainty, Applicant may be credited with some impression that it wasn't entirely essential that he cease drinking totally in the future.

Altogether, Applicant completed eight sessions with Dr. D over an eight-week period between March 1999 and July 1999 (*see* R.T., at 61). Over the period he consulted with Dr. D, he avoided all alcoholic beverages (R.T., at 60). And, he continued to observe abstinence for a brief period after discontinuing his sessions with Dr. D in July 1999, over payment issues (*see* R.T.,at 63-65). Uncomfortable with his perceived religious aspects of AA, he declined to attend any AA meetings during the time he was seeing Dr. D, or prior to 2002 . Still unwilling to accept AA participation, he resumed drinking in his off-duty hours, mostly on week ends, up to ½ of a fifth of liquor(ex. 5; R.T., at 64-65). His increased drinking caused him physical side effects (*i.e.,* headaches, short attention span, energy deficits and the detectable smell of alcohol on his person), much of which was noticeable to Applicant's coworkers (at least two unnamed) that he smelled of alcohol or imperceptible behavioral and physical appearance differences upon his return to work, even after he completed his counseling with Dr. D.

Applicant was first counseled by his supervisor (Mr. C) about his unacceptable work attendance in October 1999. In this counseling session, Mr. C indicated to Applicant that he thought his absences were alcohol-related that Applicant needed to address: He indicated to Applicant that he "needed to conquer the demons in my life by finding God (R.T., at 69). Based on some adverse reports from Applicant's coworkers, Mr. C returned several months later to counsel him again (this time in February 2000) about his unacceptable job attendance, unscheduled absences, (especially on Mondays), and comments from his coworkers about his returning to work with the smell of alcohol or imperceptible behavioral and physical appearance on his person (*see* ex. 1; R.T., at 70-74). Applicant denies being told by his supervisor of his being concerned enough about Applicant's drinking to file an adverse information report on him (R.T.,at 74).

Beginning in January 2000, Applicant took nine unplanned days off from work over a 30-day period. However, he denies all of the off-days were totally due to alcohol consumption. While he acknowledges three of these days were related to alcohol (in that he consumed alcohol on these days), he assures that the remaining six days were principally related to adverse conditions that closed schools (requiring him to be home with his children) and other family related reasons (*see* R.T., at 75). During this period, co-workers (excluding Mr. E) complained to company management of Applicant's smelling of alcohol and exhibiting unusual behavior. These reports prompted Applicant's supervisor (Mr. C) to counsel Applicant in February 2000 about his concerns, and to report his suspecting alcohol dependence was the probable cause of Applicant's described "deteriorating performance" (*see* ex. 1). True, some of the sources of Mr. C's

charges are challenged both by Applicant and his current supervisor who assumed supervisioral responsibility over Mr. C following his predecessor's departure (especially as to named source Mr. E, who explained at hearing that he had not detected alcohol on Applicant since he completed his 1999 counseling, *see* R.T., at 361-62). However, the core recitals of both Mr. C's report and the ensuing contemporaneously prepared report of investigation (ROI) of the DSS agent who prepared it (*see* ex. A; R.T., at 386-87) are not seriously controverted in most material respects and are accepted. So, subject to Applicant's explanation of the number of his actual days off attributable primarily to alcohol, the recitals of Mr. C's report and the DSS agent's ROI are accepted.

Applicant continued to consume alcohol, even after his latest counseling from Mr. C. Through December 2000, he continued to consume alcohol on a regular basis (*see* R.T.,at 145-46). For someone who knew he seriously abused alcohol, even if he wasn't clear on whether he was dependent or not, his regular use on weekends at the levels he described (½ of a fifth of liquor over a weekend) would appear to be excessive. Facing a DSS interview in January 2001, he made a conscious decision to cease his drinking. Realizing his problem with alcohol was dependence, and not merely abuse, he returned to counseling in March 2001. Between March 2001 and July 2001, he consulted with a psychologist (credentials and area of specialty uncertain). Altogether, he consulted with a Dr. G for a total of 8 psychotherapy sessions over a five-month period spanning March and July 2001 (*see* ex. D). Dr. G does not assign a diagnosis or describe his treatment regimen in his July 2002 letter, without which it is difficult to evaluate his treatment or Applicant responses to the same. So, while Applicant may be credited with successful treatment from Dr. G, only limited weight can be accorded the results without more information in hand.

Since resuming treatment for his alcohol problem (this time with Dr. G in March 2001), Applicant began attending AA meetings (*see* R.T.,at 133-34,193). Like his treatment with Dr. G, not much is known about the quality of his AA participation. Applicant only attended about twelve to thirteen AA meetings and has not attended one since July 1992, when he picked up his chip commemorating eighteen months of sobriety (*see* ex. B; R.T.,at 171, 199). Curiously, he returned to AA in July 2002, the same month he was furnished the SOR. Whether his reasons for returning to AA were principally rehabilitation-related or a reaction to some perceived threat of losing his security clearance is not clear. He never advised Dr. G of any intention to discontinue his AA meetings (*see* R.T.,at 177). And his only explanation for ceasing AA was his expressed concern over associating with people involved with criminal activities (*see* R.T., at 208-09). While he could demonstrate some familiarity with AA's basic structure and 12-step program, he has not gotten very far in his step work and could not recite the serenity prayer. Moreover, he has not to date sought out any alternative support program (*see* R.T., at 208). With no sponsor and no established regular commitment to AA or comparable substitute, there is very little reason to expect Applicant to return to AA or other support program in the foreseeable future. Still, he is able to document AA chips that commemorate his maintenance of absence for eighteen months. If Applicant is to be believed in his abstinence claims and chips to commemorate it, then he can be credited with considerable progress in gaining control of his alcohol problem, even without an exhibited solid commitment to AA. His claims must be appraised against the background of the developed record.

Applicant's DSS accounts of his alcohol use

Well known to Agent A because of his longstanding familiarity with Applicant in the latter's capacity as his company's site security manager and in other security-related assignments, Applicant was asked by Agent A in early January 2001 to submit to a DSS interview. Agent A had received reports of Applicant's enlisting assistance from his EAP in March 1999 about some alcohol issues and wanted to pursue them with Applicant. Applicant appeared for his interview in Agent A's office, which was not far from Applicant's. Responding to questions about his alcohol history, Applicant provided some historical background on the circumstances that prompted him to seek help from his EAP in March 1999 (ex. 3).

When asked by Agent A about whether he had resumed drinking after completing his sessions with Dr. D, Applicant stated both that he had not and had no intention of resuming alcohol use in the future. To the extent Applicant failed to alert Agent A of his resumed alcohol consumption since September 1999 (to the point of evoking the smell of alcohol on his person on some occasions), he mis-spoke and admitted to falsifying the signed, sworn statement he provided Agent A in denying his resumed use (*compare* response with ex. 3). Applicant now attempts to recant his admission by claiming he and Agent A focused primarily on Applicant's prior abuse (not use), and it was his resumed abuse he meant to deny in the first statement he signed. This claimed understanding of what Applicant thinks he entertained when he

signed statements for DSS in January 1999 raises questions for the first time as to whether Applicant simply misunderstood his adoption of the use term in making his sweeping denial of resumed consumption. This raises important credibility issues regarding the merits of Applicant's retrospective use/abuse distinctions.

Before evaluating the different impressions of what transpired in the initial and ensuing two interviews between Applicant and Agent A, resolution of raised points on which the respective parties are in agreement can be summarized. Both parties accept that the first signed, sworn statement prepared for Applicant's signature (ex. 3) was prepared in Agent B's office on his lap top computer and presented for Applicant's signature (*see* R.T., at 82-83). Applicant signed this statement in Agent B's office after reviewing it and initialing it. At no time during this review process did Applicant question any of the words or phrases utilized by Agent A in preparing the statement. Undisputed as well is that Agent A, upon talking to Mr. C about 1999-2000 reports of coworkers claiming they smelled alcohol on Applicant or observed him behaving in a manner consistent with after affects of alcohol, called Applicant in for a follow-up DSS interview later in January 2001 (*see* ex. 4; R.T., at 90-92). Not disputed either is Applicant's handwriting his relatively short second signed, sworn statement and giving it to Agent A (*see* ex. 4; R.T., at 89-94). Similarly unchallenged is Applicant's expressed willingness to submit to a polygraph examination at the end of his second interview of Applicant (*see* R.T., at 160). Once Agent A took a signed, sworn third statement from Applicant, he was apparently satisfied enough with its contents to cancel Applicant's scheduled polygraph examination (*see* R.T., at 162).

But in the second signed, sworn statement he furnished Agent A (ex. 4), Applicant himself invoked the term "use," this time to not only underscore his discontinuance of alcohol since September 1999, but also to stress his intention not to resume alcohol consumption in the future. In his response, he made no attempt to parse any different deployment of the use term to differentiate his past activity with his future intentions. At hearing, he assures he and Agent A were focused on his prior abuse of alcohol and never on when he had consumed alcohol at all over the period stressed (*see* R.T., at 85-90), and for reasonableness of this understanding, he looks to the impressions of his current supervisor whose impressions coincide with his own (*see* R.T., at 306). Stressing his abuse impressions of Agent A's questioning, Applicant insists Agent A never asked him any questions about his alcohol usage since September 1999. Agent A, by contrast, insistently disagrees and assures he discussed Applicant's use as well as any abuse the latter might have indulged in. Discussion of both types of potential involvement was important to Agent A in order to resolve the alcohol issues raised by the coworker reports to Mr. C (*see* R.T., at 390, 443-44).

Before either Applicant or Agent A could correct any possible misunderstandings in their respective versions of their exchanges, Applicant was confronted by DSS with a scheduled polygraph (*see* ex. A; R.T., at 160-63). Once confronted by a scheduled polygraph, Applicant rethought the answers he had previously provided in his signed, sworn statements and told his direct supervisor (Mr. H) he needed to see Agent A about some corrections to his alcohol history, if he was to avert jeopardizing his career (*see* response; R.T. ,at 105-06). Applicant, in turn, prepared a draft statement on his own word processor and made an appointment to see Agent A about it (*see* ex. B; R.T., at 112-13).

Once Applicant contacted Agent A (in February 2001) and arranged to present his draft of a correcting statement to Agent A in a third meeting with the agent, Agent A took the statement and reviewed it before determining how it would be typed up on a standard DSS form (*see* R.T., at 119). While the versions differ here as to who was tasked to prepare the new statement for Applicant's signature, close examination of the respective signed, statements and comparison with Applicant's draft makes unavoidable drawn inferences that Applicant's first and third statements were drafted by the same hand using the same style and font, and likely the same hard drive. So, just as Agent A drafted the first statement for Applicant, he is attributed with preparing the third statement as well (*compare* exs. 3 and 5 with B). Agent A's claims to the contrary (*compare* exs. 6 and I) were mistaken and contribute to credibility weaknesses in the quality of most of his other undocumented recollections, which are based on accounts of interviews completed several years previous.

Overall, Agent A tried to claim too much based on his memory of interviews he endeavored to isolate with precision from among the hundreds he conducted in the 2001 time frame. It became manifest that his distinct recall of his employment of both abuse and use terms in his interviews of Applicant were based more on what he considered to be his common practice than upon anything specific he remembered from his interviews of Applicant (*compare* R.T., at 388-89, 413-14, 424-26, 441-48, 452-54). Consequently, not a great deal of weight can be given to Agent A's recollections of his conversations with Applicant.

On the ultimate issue of whether Applicant misstated his lack of any use of alcohol since September 1999, however, inferences must be drawn against Applicant. Responding to the falsification allegations in the SOR covering all three of his signed, sworn statements, he admitted to falsifying these statements in violation of 18 U.S.C. Sec. 1001. None of these admissions were withdrawn during the evidentiary course of hearing. His later request to withdraw them in his written summation (footnote 17) comes too late and without sufficient good cause to grant Applicant's request.

On the key question of his post-September 1999 resumption of alcohol, not only did Applicant admit unequivocally to falsifying his signed, sworn statements given to Agent A in January 2001, but he displayed manifest inconsistencies in his hearing attempts to reconcile his deployment of use when tracing his consumption backwards and forward in time. Only if Applicant is able to provide persuasive explanations of how he could in good faith confuse use with abuse in the DSS statements he provided in January 2001 can any pleading relief be accorded Applicant on his hearing claims that his SOR admissions were based solely on retrospective impressions he had acquired after correcting his earlier statements (*see* R.T., at 85-90;182-90). This presents a tall challenge for Applicant, because the plain wording of his SOR responses leaves precious little room for avoiding the pleading affects of his admissions.

That Applicant is educated, experienced and knowledgeable of the security risks that are generally associated with a clearance holder's abuse of alcoholic beverages can not be doubted. He brings to these proceedings a wealth of personal experiences and expertise in dealing with security clearance issues that could impact on the protection of classified information. Certainly mindful of the lessons he learned about his prior abuses of alcohol from his counseling sessions with Dr. D, Applicant continued drinking at levels he thought he could safely control. Embarrassed at being told by Mr. C, and later Agent A, that coworkers had smelled alcohol on his person (even following his since discontinued treatment sessions with Dr. D), Applicant inferentially approached his first two interviews with Agent A with a mind set of wanting to avoid or minimize any disclosures of drinking that might raise security-related questions about his counseling and program compliance (*see* exs. 1 and B).

By Applicant's own account, Mr. C's earlier adverse information report caught him completely off guard, and the ensuing investigation based on Mr. C's generated report caused him great concern and embarrassment not only about his career, but having to admit to Agent A and others "that I continually had an alcohol problem" (*compare* R.T., at 84-85, 140-41). Applicant's answers to the SOR clearly reflect these investigation concerns and resulting embarrassment, but with the inferential knowledge as well that his omissions might affect his working relationships with his coworkers and supervisor, and even impact his career. That he had not given a lot of thought to what he told Agent A in his interviews (*see* R.T., at 200) strengthens, not weakens, the case for accuracy of his pleading admissions. His subsequent parsing of the "use" word when tracing his prior consumption and charting his future intentions becomes most understandable in the context of his trying to undue the implications of his admitting to misstatements about his post-treatment resumption of alcohol consumption at any level, not just at abusive levels.

What is more, Applicant's failure to come forward with the correct historical account of his drinking resumption until after he was notified of a scheduled polygraph sows further seeds of doubt about his claimed interview impressions and adds further reason to attribute Applicant understanding of his past misstatements about his alcohol resumption and determined intention to correct these misstatements before he was polygraphed. Inferences of Applicant's knowing and wilful misstatements about his alcohol resumption following his discontinued treatment from Dr. C in July 1999 simply cannot be averted. Opportunity and motivation to avert embarrassment among his colleagues (his hearing denials notwithstanding) intertwine with Applicant's DSS misstatements to such a degree as to make his explanations about his misstatements simply too implausible to gain acceptance.

Applicant's exemplary record of accomplishment and trust

Applicant is highly regarded for his more than twenty-five years of dedicated service with his company in his field of specialty: industrial security. His many credits include excellent performance evaluations between 1998 and 2002 (*see* ex. C). In these evaluations he is praised for his technical expertise, organizational skills and strong work ethic. Applicant's coworkers (especially Mr. E) and the current director of security for his company (also his direct supervisor) provide unequivocal support for Applicant's retention of his security clearance. They describe him as trusted colleague and superb organizational leader who consistently demonstrates high integrity and trustworthiness and sets similar standards for both his employees and others employed by the company (*compare* exs. E and F).

Applicant is considered his company's single most knowledgeable and trusted employee on the subject of protecting classified information. He is recognized for his knowledge of classified security systems by his counterparts in the security industry, who twice have elected him as president of the National Classification Management Society (NCMS). Both in this position and as a member of the NCMS board, he has been able to represent his industry in its pursuit of a Government-Industry partnership in the establishment of classification policy regarding the National Industrial Security Program (NISPOM). Through his leadership, his company has been the recipient of several awards from DSS for significant security contributions to the Country (*see* ex. F; R.T., at 365-66). Applicant is credited with making significant overall contributions to his company's security program and the NISPOM in general (*see* R.T., at 45-46, 365). He is reputed to being an expert on the NISPOM's Industrial Manual, as well as security policy in general.

POLICIES

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

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

Alcohol Consumption

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

Disqualifying Conditions:

DC 2 Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job.

DC 3 Diagnosis by a credentialed medical professional (*e.g.,* physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence.

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

DC 6 Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.

Mitigating Conditions:

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

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

MC 3 Positive changes in behavior supportive of sobriety.

MC 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 AA or a similar organization, has abstained from alcohol for a period of at least 12 months, and received favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Personal Conduct

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

Disqualifying Conditions:

DC 3 Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination.

DC 5 A pattern of dishonesty or rule violations.

Mitigating conditions:

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

MC 3 The individual made prompt, good faith efforts to correct the falsification before being confronted with the facts.

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

Criminal Conduct

The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Disqualifying Conditions:

DC 1 Allegations or admission of criminal conduct.

DC 2 A single serious crime or multiple lesser offenses.

Mitigating Conditions:

MC 1 The criminal behavior was not recent.

MC 2 The crime was an isolated incident.

MC 4 The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur.

Burden of Proof

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

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

security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

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

CONCLUSION

Appellant comes as a highly regarded security team leader who developed alcohol problems during the 1998-1999 time period, attributable to stresses in his personal and professional life, and addressed them through counseling and eventually self-imposed abstinence. Falsification is another issued addressed in these proceedings and concern Applicant misstatements about his alcohol consumption made to an interviewing DSS agent in January 2001.

Applicant's alcohol history and current efforts in avoiding alcohol

Before 1998, Applicant was by all accounts a social consumer of alcohol with no history of alcohol-related incidents attributable to him, either work-related on away from work. This all changed in 1998 as he faced a confluence of traumatic events in his life, to include the birth of a child with serious health problems. Compounding his stresses at home were the tensions he faced at work in dealing with a direct supervisor at the time (Mr. C) who had a very contentious relationship with his department manager and provided precious little positive direction to Applicant. All of these stresses in his life frustrated him and prompted him to resort to excessive alcohol use as a chosen vehicle for relieving his stress. These stresses and the alcohol he was abusing to soften the effects of these strains in his life reached an apex for him in March 1999. At this point he made the voluntary decision to consult a health provider to find relief. Diagnosed for alcohol dependence and advised to abstain and attend AA, Applicant balked and soon returned to alcohol consumption, albeit at much lower levels than he had become accustomed to.

Applicant never finished his consultation program with Dr. D and ceased counseling altogether in July 1999 over payment issues. Apparently unbeknownst to Applicant, his treatment provider (Dr. D) had pronounced Applicant as alcohol dependent and clearly advised him to abstain and seek AA support. Not understanding Dr. D's advice to include a dependence diagnosis, abstinence and AA attendance, Applicant soon returned to drinking after September 1999, enough apparently to prompt reported detections of alcohol on his person throughout the remainder of 1999 and into January 2002. His resumption of drinking so soon after discontinuing his treatment with Dr. D only fueled Government concerns about the quality of his sobriety. True, Dr. D may not have been clear in his communicating his dependence diagnosis and abstinence/AA recommendations to Applicant. But Applicant is imputed to know at the very least he had a serious abuse problem (enough to seek voluntary counseling): a strong signal to stay with the abstinence he charted for himself and seek out other types of support groups, if he wasn't comfortable with AA. Returning to borderline, if not abusive drinking, in September 1999 was not a good choice for him then: much less so, of course, after looking at the problem retrospectively.

The Government's concerns about Applicant's potential to return to habitual or binge drinking in the foreseeable future prompts the Government to proclaim Applicant a recurrence risk. To be sure, Applicant's counseling efforts since his last drink in December 2000 (almost two years) include several months of successful outpatient counseling with Dr. G (presumably certified in substance abuse counseling) and irregular attendance with his local AA chapter, but little in the way of sustained access to recognized support organizations. Most impressive about Applicant's recovery is the two years he devoted to abstinence and the eighteen months of chips he has received from AA to commemorate his sobriety. Because he used his last trip to an AA meeting (in July 2002) to obtain his commemorative chip, he opens himself to some question about his limited use of AA as a therapeutic instrument. At most, though, the timing of his attending his last AA meeting to obtain his commemorative chip (the same month and year the SOR was issued) raises correlative questions about the depth of his commitment to alcohol rehabilitation, not causative ones, and should in no way diminish the importance of his eighteen month chip.

On the strength of the evidence presented, four disqualifying conditions (DC) of the Adjudication Guidelines for alcohol consumption may be invoked by the Government: DC 2 (alcohol-related incidents that impact at work), DC 3 (diagnosis by a credentialed medical professional); DC 5 (habitual or binge consumption) and DC 6 (consumption of alcohol

subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program).

Applicant makes the point that he was scrupulous not to drink on or near his job or in public places and continued to perform at high levels even during the period of his most acute alcohol difficulties. Security clearance decisions, however, are not limited to consideration of an applicant's on-site professional contributions; alcohol abuse, even during off-duty hours, exposes an applicant to risks of inadvertent disclosure of classified information. This is a presumption that has drawn the support of both DOHA's Appeal Board (*see* DISCR OSD Case No. 92-0404 (May 25, 1993) and the Supreme Court. *See Cole v. Young,* 351 U.S. 536, 550n.13 (1956). That an applicant has avoided any security violations or mishaps in administering to classified information in the past, while pertinent and entitled to weight, does not absolve all risks about his or her potential for mishandling classified materials in the future. Security clearance decisions are not cut from exact scientific postulates and concededly cannot be precisely calibrated to underwrite established risks. Nonetheless, they do entail predictive judgements about an applicant's vulnerability to inadvertent disclosure of Government secrets. Appraising an applicant's risk exposure, Government need not wait until an applicant actually mishandles classified information before it can deny or revoke access to such information. *Cf. Adams v. Laird,* 420 F.2d 230, 238-39 (DC Cir. 1969), *cert. denied,* 397 U.S. 1039 (1970). Nor need Government produce direct or objective evidence of nexus to support a clearance denial or revocation. *See* DOHA OSD Case No. 95-0544 (April 23, 1996); *accord, generally, Gayer v. Schlesinger,* 490 F.2d 740, 750 (D.C. Cir. 1973).

Assessment of Applicant's alcohol-related conduct must be made on the basis of a review of the entire evidentiary record developed to date, not merely the information developed with respect to his identified alcohol abuse and ensuing counseling and abstinence efforts. In making an overall assessment of Applicant's clearance eligibility, major emphasis must be accorded his most recent drinking history, job performance and support he receives from his supervisor and work colleagues. In Applicant's case, his support base remains very strong among those who know him professionally and personally.

By his actions and improved understanding, Applicant demonstrates he has taken the necessary restorative and corrective measures in his personal affairs to ensure that he does not repeat the same or similar judgment lapses associated with his prior problems with alcohol abuse. His mitigation efforts not only reflect important abstinence time (almost twenty four months worth of sustained abstinence) without any further reports at work or problems in these covered areas, but some manifest sustaining positive steps (such as months of recent counseling with Dr. G interspersed with modest AA participation) to ensure that he does not experience any alcohol abuse relapses in the future. Significantly, during Applicant's maintained sobriety over the past twenty four months, he has not encountered any problems with coworkers at work or in his personal life. While evidence of more robust AA participation might have strengthened his mitigation showing, and perhaps provided better indicators for making predictive judgements about his ability to sustain his abstinence in the future, he is to be credited with a fairly sizable support network currently at work. This and his own demonstrated will power appears to have been more effective in keeping him sober than the AA meetings he has attended in the past.

Applicant's demonstrated efforts to remedy his judgment lapses associated with alcohol abuse enable him to take advantage of three mitigating conditions (MC) of the Adjudication Guidelines for alcohol consumption: MC 2 (problem occurred a number of years ago and there is no indication of a recent problem), MC 3 (positive changes in behavior), and MC 4 (successful completion along with aftercare and sustained abstinence). Altogether; Applicant provides sufficient demonstrative indications of sustained mitigation of his drinking problems to overcome any residual security risks associated with his past alcohol-related judgment lapses.

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

Applicant's DSS misstatements

Posing potential security concern as well are Applicant's omissions of his resumed alcohol use in a succession of DSS

interviews in January 2001. After admitting to knowing wilful falsification in his SOR response to Agent A's questions about any resumed use of alcohol following his concluded treatment with Dr. D, Applicant essentially recanted his admissions at hearing. Disputing any intention to falsify his answers to questions about his resumed alcohol use, he stressed his assumption all along that he was addressing any post-treatment abuses of alcohol when he answered in the negative to any prior alcohol use.

Pleading admissions in DOHA proceedings are treated not dis-similar to the way they are handled in the courts. While not evidence, pleading admissions have the effect of withdrawing a fact from issue and totally dispensing with the need for proof of a fact. Such admissions have been held to be conclusive in a case, unless allowed to be withdrawn on good cause shown. *See* DISCR OSD Case No. 90-0401 (January 24, 1994); *see McCormick on Evidence,* Sec. 262 (Edward W. Cleary et al. eds., 3d ed. 1984). Only when the admission has been withdrawn or amended by permission does the admission lose its status as a judicial or official admission. Applicant in this case made unequivocal admissions in his response to falsely denying any resumed use of alcohol in his January 2001 DSS interviews with Agent A, in violation of 18 U.S.C. Sec. 1001. He backed his omissions with no extenuating circumstances, while claiming isolation and embarrassment. Applicant's admissions effectively fix not just his falsifications, but their knowing and wilful undertaking in violation of the federal false claims act. He made no request to retract the admissions during the evidentiary phase of the hearing, and his post-summation request to withdraw and/or amend was denied for lack of sufficient good cause. Applicant's admissions, as such, remain attributable to him for the duration of the proceedings.

Pleading admissions, however, don't preclude an applicant from offering extenuating circumstances accompanying his admitted falsifications. Applicant was permitted to do just this: (1) explain his claimed retrospective reasons for making his SOR admissions and (2) demonstrate his real assumptions when he disclaimed any resumed use of alcohol in his first two statements given to Agent A. For even obvious omissions of material facts (to include non-prosecuted misdemeanor charges occurring within the previous seven years) may be extenuated where circumstances indicate the declarant was under some mistaken impression or understanding when he executed a government form (such as an SF-86) or signed off on a deficient signed, sworn statement. *Cf. Raybourne v. Gulf Atlantic Towing Corp.*, 276 F.2d 90, 92 (4th Cir. 1960). Both the E.2.2 factors of the Directive's Change 3 amendments and relevant case authorities underscore the importance of motive and subjective intent considerations in gauging knowing and wilful behavior. *Cf. United States v. Chapin*, 515 F.2d 1274, 1283-84 (DC Cir. 1975); *United States Steinhilber*, 484 F.2d 386, 389-90 (8th Cir. 1973); *United States v. Diogo*, 320 F.2d 898, 905 (2d Cir. 1963).

Applicant's DSS misstatements in this proceeding reveal claimed mistaken understandings about availed terminology that betray reason when matched against his demonstrated education, experience, knowledge, and the respect customarily accorded prior pleading admissions not withdrawn. Government may invoke one disqualifying condition (DC) for personal conduct of the Adjudicative Guidelines: DC 3 (deliberately providing false or misleading information to concerning relevant and material matters to an investigator). While DC 5 might have some tangential bearing because of the repeated nature of Applicant's misstatements in his two DSS statements, his statements are isolated and compressed within a short time space when appraised against an otherwise meritorious reputation for honesty and trustworthiness. DC 5, accordingly, should not be invoked here.

Motivation is key here and provides the all too critical backdrop by which Applicant's DSS disclaimers of any post September 1999 alcohol use and clearance impacting embarrassment must be assessed. Here, both reason, motivation and whole person experience and knowledge converge to demonstrate Applicant's explanations are not fully reconcilable with his exhibited knowledge of his considerable resumption of alcohol (up to a ½ of a fifth of liquor on weekends) which he accounted for in his third (and final) DSS statement after being confronted with a scheduled polygraph examination. Imputed to Applicant as well is the embarrassment he harbored about not only Agent A (with whom he enjoyed a sustaining professional relationship) and his work colleagues finding out about his continuing alcohol problem, but his exposure to some career risk attributable to his continuing alcohol abuse: all acknowledged concerns of his at hearing.

Taking into account all of the circumstances surrounding Applicant's interviews with Agent A, Applicant's hearing explanations about his use understanding and concerns when being interviewed by Agent A are neither reasonable nor free of credibility doubts about the quality of his apparent reversal of his falsification admissions.

Mitigation is difficult to credit Applicant with. Only after being notified of a scheduled polygraph examination did he make the decision to correct his misrepresentations about his prior alcohol use. Corrections made under threat of a polygraph do not normally meet the prompt, good-faith conditions of MC 3 of the Adjudication guidelines for personal conduct and cannot be availed by Applicant to mitigate his misstatements in the present circumstances. Nor may Applicant fairly take advantage of either MC 1 (information unsubstantiated) or MC 4 (positive steps taken to reduce or eliminate vulnerability to coercion, exploitation, or duress) in this case pursued under falsification theory. The use of MC 2 is generally confined to correcting old misrepresentations unlike the ones covered in the SOR.

Whole person analysis is generally not sufficient either to undue knowing, wilful omissions of material facts in a Government investigation of an applicant's continuing clearance eligibility. Embarrassment over informing colleagues of adverse actions and ensuing career risks have never been accorded a good deal of weight by our Appeal Board in assessing extenuation and mitigation. *See* ISCR OSD Case No. 01-06870 (September13, 2002); DISCR OSD Case No. 88-2245 (June 22, 1990). So much trust is imposed on persons accessed to our nation's secrets that the margins for excusing material omissions and misstatements are necessarily high. Here, the high standing Applicant enjoys with his defense contractor and in the security community he serves entitles him to generous acknowledgment of his contributions to the defense effort. For his efforts he is to be commended. But this high standing alone cannot entitle his misstatements to discounting, if fairness and uniformity in the administration of personnel security adjudications are to reign.

Our Appeal Board has been careful to underscore that neither value to his employer nor demonstrated overall honesty and professional reputation are sufficient to surmount the adverse trust implications that stem from material misstatements in an SF-86 or DSS interview. *See* ISCR OSD Case No. 98-0435 (September 16, 1999); ISCR OSD Case No. 98-0370 (January 28, 1999); DISCR OSD Case No. 93-1390 (January 27, 1995). That Applicant has been diligent in his stewardship of protecting classified information and securing classified systems under his control does not insulate him from questions about his own departures from candor expectations when providing information to DSS investigators. Our Supreme Court teaches that even in close cases involving trust issues over security clearances, doubts should better be resolved against granting the clearance. *See Department of Navy v. Egan,* 458 U.S. 518, 531 (1988).

Considering the record as a whole, Applicant is not able to meet his stiff mitigation burden in this case. Having failed to correct his misstatements until after being notified of a scheduled polygraph, he neither refutes nor mitigates the falsification allegations covered in sub-paragraphs 1.a and 1.b of Guideline E.

The Government also seeks application of the criminal conduct guidelines of Guideline J to Applicant's covered misrepresentations. On the application of Guideline J to conduct not met by a criminal conviction, our Appeal Board has repeatedly stated that the Government can prove applicant engagement in criminal conduct, even in the absence of a criminal conviction. *Cf.* ISCR Case No. 94-1213 (June 7, 1996). Applicant's misstatements are isolated ones (closely compressed within a couple of weeks in January 2001), though, against an otherwise good reputation for honesty and trustworthiness. So, notwithstanding his imputed misstatements which violated the false claim provisions of 18 U.S.C. Sec. 1001, his misstatements are entitled to the mitigation benefit of MC 2 (isolated incident) of Guideline J for criminal conduct. Applicant may also take advantage of MC 4 (unlikely to recur). Overall, Applicant's misstatements are mitigated under the reach of the whole person evaluation tenets of E.2.2 of the Adjudication Guidelines. Favorable conclusions warrant with respect to the allegation covered by Guideline J.

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

FORMAL FINDINGS

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

GUIDELINE G (ALCOHOL): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

Sub-para. 1.d: FOR APPLICANT

Sub-para. 1.e: FOR APPLICANT

Sub-para. 1.f: FOR APPLICANT

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Sub-para. 2.a: AGAINST APPLICANT

Sub-para. 2.b: AGAINST APPLICANT

GUIDELINE J (CRIMINAL CONDUCT): FOR APPLICANT

Sub-para. 3.a: FOR 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge