

DATE: March 18, 2004

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-21599

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Esq., Department Counsel

FOR APPLICANT

Thomas Albin, Esq.

SYNOPSIS

Applicant was convicted of driving under the influence of alcohol offenses committed in October 1994 and in August 1998 after he had received treatment for alcohol dependency. While he has resolved to abstain from alcohol and has attended Alcoholics Anonymous (AA) meetings once per week since August 2003, he continues to use wine or vermouth in cooking. It is too soon to conclude that his alcohol abuse is safely in the past. Clearance is denied.

STATEMENT OF CASE

On July 17, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. [\(1\)](#) 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 Alcohol Consumption (Guideline G).

On July 30, 2003, Applicant filed his response to the SOR allegations and requested a hearing before a DOHA administrative judge. The case was assigned to me on August 26, 2003, and pursuant to notice dated August 28, 2003, the hearing was scheduled for September 19, 2003. The parties appeared as scheduled, but the hearing was continued without objection at the request of Department Counsel. Pursuant to Amended Notice of Hearing, the hearing was held on October 2, 2003. The Government's case consisted of seven exhibits. Applicant presented his testimony and that of his father. A transcript of the hearing was received on October 15, 2003.

FINDINGS OF FACT

The SOR allegations concern Alcohol Consumption (Guideline G) based on an alcohol abuse history that includes alcohol-related domestic incidents during the 1990 to 1992 time frame, treatment for alcohol dependency in 1994 with subsequent drunk driving offenses in October 1994 and August 1998 and disciplinary action by his employer in March

1996 for reporting to work under the influence, and continued consumption of alcohol. In his Answer, Applicant admitted the allegations, correcting the location of the August 1998 offense. His admissions are incorporated as findings of fact. After a complete and thorough review of the evidence, I render the following additional findings:

Applicant is a 50-year-old first class sheet metal mechanic with a defense contractor (company A). Hired initially in October 1973 into a four-year apprenticeship program, Applicant left the company in 1978 when he moved out of state. Eleven months later, he returned to his position as a first class sheet metal mechanic which he held until he was laid off in June 1997. In March 2002 he returned as a new hire, although with some benefits reinstated. He requires a security clearance for his duties as a first class sheet metal mechanic.

Applicant began to consume alcohol at age 17 (circa 1970). As a young college student, he drank a six-pack of beer once or twice per week. "Once in awhile" he imbibed up to twelve beers at a sitting, becoming intoxicated and leaving him with a headache the next day. After two years of college, he was hired into the sheet metal mechanic apprenticeship program at company A.

Married in May 1975, Applicant began drinking hard liquor. While he drank less frequently, when he indulged it was in greater quantity. By 1990, Applicant and his spouse's marital relationship had deteriorated, caused in part by her overspending on credit and his alcohol consumption. On three or four occasions over the next two years, Applicant's spouse called the police during altercations with Applicant--some where he had been drinking--and complained of domestic violence. An altercation ensued on one occasion after Applicant cut up her credit cards. Applicant's spouse obtained a restraining order against him.

Following his divorce in October 1992, Applicant moved in with his parents. By early 1994, he was drinking two 16-ounce beers plus a pint of rum or vodka daily. After operating a vehicle in an intoxicated condition when his daughter was in the car, he was given an ultimatum by his parents that he could no longer live with them if he continued to drink. In mid-January 1994, Applicant voluntarily admitted himself as an inpatient into a local alcohol rehabilitation treatment program. Diagnosed as suffering from alcohol dependence, he underwent detoxification protocol successfully, and attended small group and Alcoholics Anonymous (AA) meetings. Aftercare plans at discharge in early February 1994 included four to five AA meetings weekly, communication with his AA sponsor, attendance in the treatment facility's evening program three times per week, and individual outpatient counseling.

Applicant attended only four sessions of the treatment facility's evening partial hospitalization program because of insurance coverage issues. Applicant maintained sobriety during his brief treatment and shared his life experiences in small group therapy but attended only one AA meeting. At discharge in mid-February 1994, he was advised to abstain from alcohol. His prognosis was assessed as guarded due to concerns about his readiness for discharge and commitment to continuing his recovery through AA. Aftercare plans included five AA meetings weekly. Applicant went to AA meetings once to twice per week for six to eight months after discharge, but he resumed drinking alcohol "after a while" with lesser frequency, but "more than [he] should have."

In October 1994, upset that his ex-spouse had declared bankruptcy and moved a boyfriend into his children's home, Applicant consumed a couple of beers at a local bar. While driving home, he consumed some rum that he had in his vehicle. Intoxicated, he rear-ended another vehicle. Responding police arrested Applicant for driving under the influence (DUI) and he submitted to a breathalyser at the station which registered a .20 % blood alcohol content. Applicant pleaded guilty to the charge and he was fined, ordered to attend an alcohol safety action program and AA.

Applicant's drinking after the DUI varied from daily to once or twice per week. Approximately once every two or three months, he imbibed to intoxication. While on temporary duty out of state for his employer in March 1996, Applicant consumed six or seven rum and cokes during the day before reporting for an evening shift. As he attempted to enter the military base where he was scheduled to work, he was stopped for being under the influence and sent back to his hotel. He was recalled from temporary duty and suspended for one week without pay for reporting to work under the influence in violation of company rules and regulations. Applicant continued to consume alcohol with varying frequency after the incident.

In mid-August 1998, Applicant consumed rum and coke to intoxication while sitting in his vehicle in a local parking lot. En route to pick up his daughter, he ran a stop sign and struck another vehicle. Detecting a strong odor of alcohol on

Applicant's breath, the police arrested him for DUI after he failed field sobriety tests. Applicant was charged with DUI, risk of injury to a minor, and failure to obey a stop sign. He pleaded guilty to DUI and was sentenced to supervised probation for eighteen months to two years, 100 hours of community service, one year license suspension, and a fine. The risk of injury to a minor charge was dismissed. Applicant attended ten counseling sessions as mandated by his probation where he focused on the personal aspects of his drinking. He was advised to abstain completely from alcohol.

Following his second DUI, Applicant stopped going to bars. He continued to consume alcohol at his residence at the rate of one or two rum drinks occasionally. Applicant also used wine and vermouth as a marinade when cooking. As of a subject interview of May 20, 2002, Applicant intended to continue that rate of alcohol consumption, which he considered to be minimal and not a problem.

As of mid-April 2003, Applicant was drinking one rum and coke or glass of wine every third day on average. On occasion, Applicant "might have had . . . two or three." In response to alcohol interrogatories in April 2003, Applicant expressed his hope to eliminate that drinking "shortly" and to limit his use of alcohol to cooking.

Shortly after receiving the SOR on July 24, 2003, Applicant resolved to stop drinking. Since August 2003 he has attended AA on a once weekly basis and limited his involvement with alcohol to cooking with wine or vermouth on occasion. Applicant has no intent to drink alcohol in the future, but he is still debating whether he can safely cook with alcohol. Aware that the AA program does not condone any involvement with alcohol, Applicant admitted his use of alcohol in cooking has gotten him "*into trouble with some of [his] AA buddies.*" Applicant does not have a sponsor in AA. As of early October 2003, he had some wine in his home left over from cooking a scallop dish about a month and a half before. He denies any urge to consume that wine.

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 restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. 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.

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

Alcohol Consumption

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

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

E2.A7.1.2.1. 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.A7.1.2.2. Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job;

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;

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

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

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

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

CONCLUSIONS

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

While the Directive does not prohibit drinking per se, excessive alcohol consumption is of concern because it 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. Although there were a few occasions in the early 1990s where Applicant was involved in domestic incidents with his spouse after he had been drinking, his drinking escalated after his divorce in October 1992. By early 1994, he was imbibing two 16-ounce beers or up to a pint of rum or vodka daily. The degree to which he had lost control over his consumption is evident by his driving while intoxicated when his daughter was with him. Faced with an ultimatum from his parents, Applicant admitted himself into an alcohol rehabilitation program in February 1994, where he was medically diagnosed as suffering from alcohol dependence.

Discharged from the treatment program prematurely because of insurance coverage issues, Applicant was given a guarded prognosis. The counselor's concerns about Applicant's commitment to recovery through AA and readiness for discharge were borne out in his short-lived sobriety and subsequent adverse legal and occupational difficulties (October 1994 DUI, March 1996 work suspension for reporting to work under the influence, and August 1998 DUI). His alcohol abuse history warrants consideration of disqualifying conditions E2.A7.1.2.1. (Alcohol related incidents away from work), E2.A7.1.2.2. (Alcohol related incidents at work), E2.A7.1.2.3. (Diagnosis by a credentialed medical professional of alcohol dependence), E2.A7.1.2.5. (Habitual consumption of alcohol), E2.A7.1.2.6. (Consumption of alcohol subsequent to a diagnosis of alcoholism).

Following his August 1998 DUI, Applicant changed his drinking habits in that he no longer went to bars. In May 2001, he described his consumption as "*one or two rum drinks, but only very occasionally,*" with some use of alcohol as a marinade. As of April 2003, he was drinking one rum and coke or wine every third day on average. While his recent consumption has not approached previous levels, and there is no evidence of alcohol-related social, legal or occupational impairment since August 1998, any alcohol consumption was contrary to therapeutic advice. It was not until he faced the potential denial of his clearance that Applicant resolved to stop drinking. There is no evidence he has enjoyed an alcoholic beverage (apart from using alcohol in cooking) since he resumed an affiliation with AA in August 2003. These positive changes in support of sobriety (*see* mitigating condition E2.A7.1.3.3.) are not enough to overcome the security concerns presented by his history of excessive alcohol consumption, however. The Directive has more stringent requirements when an individual has been diagnosed as alcohol dependent: successful completion of inpatient or outpatient rehabilitation along with aftercare requirements, frequent participation in meetings of AA or similar organization, abstinence from alcohol for at least 12 months, and a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program (*see* E2.A7.1.3.4.). Applicant left treatment prematurely in 1994. Although he goes to AA once per week, it is not clear whether he fully accepts the tenets of the program. He does not yet have a sponsor and is still debating whether he can use alcohol in cooking, knowing it is against the AA program. As of October 2003, he had some wine in his home. While he testified he has "*not really*" had an urge to drink that wine, it is too soon to conclude that his alcohol problem is safely in the past.

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: 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

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. The SOR was issued under the authority of 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).