

DATE: May 25, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-24439

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Following a domestic assault incident in January 2002, Applicant successfully completed ten months of outpatient counseling for domestic violence. Despite being diagnosed with alcohol abuse, he was not referred for any alcohol treatment and was given a good prognosis on discharge. His continued consumption of alcohol does not raise security concerns where it has been in moderation. Clearance is granted.

STATEMENT OF THE CASE

On June 8, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons under Guideline G, alcohol consumption, and Guideline J, criminal conduct, why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. [\(U\)](#)

On June 16, 2004, Applicant submitted his Answer to the SOR and requested a hearing before a DOHA administrative judge. The case was assigned to me on November 4, 2004. Pursuant to notice of November 5, 2004, a hearing was scheduled for November 29, 2004. At the hearing, three government exhibits and seven Applicant exhibits were admitted into the record. A retired Defense Security Service (DSS) special agent testified for the government. Testifying on Applicant's behalf was Applicant, his supervisor, another coworker, and his ex-wife. A transcript of the hearing was received on December 9, 2004.

FINDINGS OF FACT

DOHA alleged under Guideline G: Applicant consumed alcohol at times to excess from approximately 1976 to at least September 3, 2003; was arrested in January 2002 for assault third degree and disorderly conduct (two counts), charges dismissed on completion of an anger management course; was treated from February 2002 to November 2002 for diagnosed alcohol abuse; and he continued to consume alcohol after this treatment to at least September 3, 2002. Applicant's January 2002 arrest was also alleged under Guideline J. Applicant admitted his criminal arrest but denied

the remaining allegations. After a complete review of the evidence, I make the following findings of fact:

Applicant is 44 years old and has worked for his present employer, a defense contractor, since April 1986. Applicant's duties have evolved from laser operator to working with special technology coatings like plasma maskents. In early 2004, he took over "dress responsibilities" in support of advance coatings. Applicant seeks a secret-level security clearance, having held an interim secret clearance without adverse incident until the SOR was issued.

Applicant first tried alcohol at age 15. At age 18, he entered on active duty in the Army. While in the military, he drank "a lot." Following his discharge in 1983, he typically consumed four or five drinks at a sitting when out enjoying himself (drinking and dancing) on the weekends. On occasion, he drank irresponsibly. His involvement with alcohol became more sporadic during his early 30s, as there were months when he drank no alcohol.

In September 1996, Applicant and a former girlfriend had a son. After paternity tests determined the child was his, Applicant took physical custody of the baby in about March 1997. Rearing the child with little involvement from the child's mother, Applicant refrained from consuming any alcohol and was active in his church as a deacon.

In September 1997, Applicant began dating a committed Christian woman who rarely drank. They married in April 1999, and apart from champagne at their wedding, Applicant did not drink. Sometime in 2000 or early 2001, Applicant began to consume alcohol, usually a mixed drink (vodka and grapefruit) when he went out. Occasionally he drank beer that he kept in his refrigerator, but it was not to abusive levels. During the latter half of 2001, he drank with a neighbor once in awhile. By late 2001, he and his (now former) spouse had separated emotionally, although they were still living together. Financial issues were a significant cause of their marital difficulties, as she maintained control of the finances and contributed a substantial portion of their income to the church (almost 24% in 2001); more than he felt they could reasonably afford.

Late one Friday afternoon in mid-January 2002, Applicant put down \$2,000 to purchase a motor vehicle. He became angry with his spouse on learning that they did not have the funds in their checking account, as she had transferred their money to her savings with the intent of donating to the church. The argument escalated until he struck her in the face and then left the residence. Although they had argued in the past, Applicant had never previously assaulted her. Applicant's spouse complained to the police a few days later, and a warrant was issued for Applicant's arrest.

Applicant voluntarily turned himself in to the police in late January 2002, after learning of the warrant, and he was charged with third degree assault and two counts of disorderly conduct. The charges were subsequently dismissed contingent on his participation in an outpatient anger management counseling program that he had begun within days of his arrest.

With his anger having increased to the point where he wanted to hit, break, or shake something, Applicant voluntarily sought counseling at a local clinic within days of his arrest. At an intake evaluation in early February 2002, Applicant was diagnosed by a licensed clinical social worker as suffering from alcohol abuse and impulse control disorder, not otherwise specified. Applicant told the counselor on intake that he had consumed alcohol on five of the 30 days preceding the evaluation, once to the point where he felt the effects. (2) Applicant attended 26 outpatient group sessions focusing on domestic violence issues, missing only one session. As treatment progressed, he became increasingly honest and accountable, gaining insight into his anger problem. Applicant took a leadership role in the group, providing feedback to help others become more accountable for their conduct as well. In November 2002, he was discharged from the domestic violence offender intervention program with a good prognosis, having successfully achieved his treatment goals. No further treatment was recommended.

Applicant and his former spouse, who had been separated since the January 2002 assault, were divorced in September 2002. Applicant met his current spouse in arch 2003, and they were married about six months later. As of November 2004, he and his current spouse drink socially, a glass of wine with dinner (never more than two glasses of wine) about four times per month. Applicant, who has joint custody of his son by his former girlfriend, has physical custody every other weekend. Applicant does not drink alcohol on those weekends when he has his son.

Applicant attributes his assault of his former spouse to his past tendency to let his anger build up because he did not

want to fight ("a passive anger style"). He has apologized repeatedly to his former spouse and offers no excuse for his assault.

A good worker for his employer who requires little supervision, Applicant has not exhibited any sign of being under the influence of alcohol at the workplace. He has worked with engineering to improve the quality of their operation, especially in the area of dress performance, which involves using a vibrating air tool to finish parts so they do not chip. Applicant has earned monetary awards for his contributions.

POLICIES

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

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

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

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

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

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 Guidelines G (alcohol consumption) and J (criminal conduct):

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. Applicant consumed alcohol, at times to admitted irresponsibility, during his 20s when he was in the service and after his discharge when he went out drinking and dancing. He stopped drinking after he took physical custody of his infant son in about March 1997. Apart from some champagne consumed in celebration of his marriage in April 1999, he drank no alcohol until sometime in 2000 or early 2001. He began to drink an occasional vodka and grapefruit when he was not with his spouse, but there is no evidence it led to any social, legal, or occupational difficulties.

On at least one occasion in January 2002, Applicant consumed alcohol to the point where he felt its intoxicating effects. Also in January 2002, Applicant physically assaulted his spouse during an argument over money, a criminal offense which the government contends was committed when Applicant was under the influence of alcohol. While spousal abuse related to alcohol use raises potentially disqualifying security concerns under Guideline G (*see* 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), Applicant disputes alcohol was involved in his assault on his former spouse and there is not enough evidence to conclude the incident was alcohol-related. His former spouse testified that she did not see him drinking, nor did Applicant exhibit signs of being under the influence when he struck her. Even assuming Applicant had consumed two or three beers on that occasion in an attempt to alleviate his anger against his spouse, intoxication cannot be presumed. Three beers do not amount to the binge drinking contemplated in DC E2.A7.1.2.5. *Habitual or binge consumption of alcohol to the point of impaired judgment*. His physical assault is credibly attributed to his anger toward his spouse, with whom he had been upset for some time over finances.

DC E2.A7.1.2.4. *Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*, must be considered.⁽³⁾ During his intake evaluation for domestic violence counseling, Applicant was diagnosed as suffering, in part, from alcohol abuse. This diagnosis by a licensed clinical social worker on staff at the clinic is entitled to some deference by the administrative judge who does not possess the qualifications or experience of the mental health professional.⁽⁴⁾ Under mitigating condition (MC) E2.A7.1.3.4., following a diagnosis of alcohol abuse or alcohol dependence, the individual is required to successfully complete inpatient or outpatient rehabilitation along with aftercare requirements, participate frequently in meetings of Alcoholics Anonymous (AA) or a similar organization, abstain from alcohol for a period of at least 12 months, and receive a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program. Applicant has not had alcohol treatment, does not participate in AA or similar organization, and continues to consume alcohol in moderation. However, a favorable outcome is warranted, notwithstanding his failure to meet the conditions of E2.A7.1.3.4.

Applicant's alcohol problem apparently did not raise enough concern to become a focus of his treatment at the clinic or to warrant a referral for alcohol treatment elsewhere. Had the LCSW assessed alcohol as the root cause of Applicant's domestic violence, it stands to reason she would have recommended some alcohol counseling or involvement in community support groups such as AA. Instead, Applicant was directed to a domestic violence program with primary treatment objectives the elimination of physical violence for six consecutive months (no verbal abuse for two consecutive months); focus on self without externalizing blame; refrain from minimizing statements during group; eliminate property damage; and no additional domestic violence arrests while in treatment. Applicant successfully completed the program, attending 26 group sessions over the course of ten months. His functional status greatly improved, and he was given a good prognosis with no further treatment recommended on discharge. Substance abuse is not marked by the tolerance, withdrawal, or pattern of compulsive use characteristic of alcohol dependence. Applicant has shown an ability to limit his consumption to one or two glasses of wine, which has not led to any impairment of social, legal, or occupational functioning. SOR ¶¶ 1.a, 1.b, 1.c, 1.d, and 1.e are resolved in his favor.

Applicant's physical assault of his former spouse raises security significant criminal conduct concerns. Under Guideline J, DC E2.A10.1.2.1. *Allegations or admission of criminal conduct, regardless of whether the person was formally charged* applies. However, several mitigating conditions work in his favor. His former spouse testified Applicant had not previously physically struck her. More than two years have passed without any recurrence. MC E2.A10.1.3.1. *The criminal behavior was not recent*, and MC E2.A10.1.3.2. *The crime was an isolated incident*, apply. Moreover, Applicant's present circumstances have sufficiently changed to where there is little risk of future abusive conduct. There is no evidence of marital discord in his current spousal relationship, and Applicant has learned to talk about his feelings so they do not fester and eventually manifest in verbal or physical abuse. Weighing in his favor, Applicant sought treatment voluntarily for his anger before he was ordered to participate in counseling by the court. He accepts responsibility for his assaultive behavior and has apologized repeatedly to his former spouse. MC E2.A10.1.3.6. *There is clear evidence of successful rehabilitation*, applies. SOR ¶ 2.a is also found for Applicant.

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

Subparagraph 1.e: For the Applicant

Paragraph 2. Guideline J: FOR THE APPLICANT

Subparagraph 2.a: 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. Clearance is granted.

Elizabeth M. Matchinski

Administrative Judge

- 1.
2. The DSS agent testified Applicant admitted to him in September 2003 that he had consumed two or three beers in an attempt to calm himself down before he struck his spouse in January 2002. (Tr. 26) Applicant now denies he had consumed any alcohol on that day, claiming that on further reflection, he recalls consuming beer while watching a sporting event the following day. (Tr. 64) At his intake evaluation for the domestic violence program, Applicant indicated he had drunk alcohol to the point where he felt its effects once in the preceding 30 days (Ex. 3). There is nothing in the record indicating that this instance of excessive drinking immediately preceded the domestic assault. His former spouse testified it did not appear to her that he had been drinking that day (Tr. 88) Assuming Applicant had consumed alcohol in an attempt to alleviate his anger, the evidence does not establish that he was intoxicated when he struck his former spouse.
3. Applicant testified substance abuse treatment was also available at the clinic. There were also AA meetings at the facility on Friday evenings. (Tr. 48) The clinic, which provides special education, substance abuse, wellness, and mental health services, is accredited by the Joint Commission on the Accreditation of Healthcare Organizations (Ex. 3).
4. Under the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition Text Revision (DSM-IV-TR), the criteria for substance abuse are a maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one (or more) of the following, occurring within a 12-month period:
 - (1) recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home (e.g., repeated absences or poor work performance related to substance use; substance-related absences, suspensions, or expulsions from school; neglect of children or household)
 - (2) recurrent substance use in situations in which it is physically hazardous (e.g., driving an automobile or operating a machine when impaired by substance use)
 - (3) recurrent substance-related legal problems (e.g., arrests for substance-related disorderly conduct)
 - (4) continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance (e.g., arguments with spouse about consequences of intoxication, physical fights).

I will not speculate as to the basis for the LCSW's diagnosis. While there is some evidence of interpersonal problems in

the record, both Applicant and his former spouse have denied they were due to alcohol.