DATE: December 9, 2004

In re:

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

Applicant for Security Clearance

ISCR Case No. 03-00991

ECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Pamela C. Benson, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has five driving under the influence arrests, and four alcohol education and counseling program participation between 1988 and 2002. Applicant also has two arrests for public intoxication, and spent 13 days in jail between 1996 and 2002 as a result of those arrests. Applicant has other alcohol-related incidents between 1988 and 2002. Applicant has not adhered to professionally recommended outpatient support programs to help her with her sobriety, instead relying on her own will power, her family, and her church participation to overcome her self-admitted alcoholism and professionally diagnosed alcohol dependence. Applicant has not mitigated the alcohol consumption security concern. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On December 15, 2003, DOHA issued a Statement of Reasons[(1)] (SOR) detailing the basis for its decision-security concerns raised under Guideline G (Alcohol Consumption) of the Directive. Applicant answered the SOR in writing on February 24, 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on April 29, 2004. On June 22, 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on July 1, 2004.

PROCEDURAL MATTERS

The Government moved to amend the SOR to conform it to the evidence disclosed at the hearing. The amendment was to add the following wording at the beginning of subparagraph 1.b. : "You were arrested in approximately 1992 and charged with driving under the influence. You were sentenced under the first time offender act of your state and placed on probation for one year conditioned upon completion of the weekend intervention program and not having any other alcohol-related offenses during the probation term, at which time the charge against you was dismissed." Applicant had

no objection to the amendment, and the motion was granted. (Tr. 45)

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 39 years old, divorced with one child, and works as a financial specialist for a defense contractor. Applicant has a drinking problem. She had her last alcoholic drink on January 26, 2002. She attends church three times a week and has become very involved in her religion and church activities. She contends her religious beliefs have replaced alcohol in her life as a means of coping with the stresses in her life. Applicant's son is diagnosed with a brain condition called chiani malformation. He is currently enrolled in a performing arts school in his hometown. Applicant is rated a very good worker by her supervisor, security officer, and co-workers. (Tr. 22 to 24, 27, 30, 37, 68; Exhibits 15 and 16, A to D)

Applicant drank to intoxication one night a week from 1991 to January 2002. Of her 6 arrests, one was on July 4th, the January 2002 arrest was on a Saturday, but the remainder of the arrests were during the week--two on Monday and two on Wednesday. Her alcohol drinking increased in 1991 after her husband was sent to jail for drug trafficking. Applicant was alone with her child and became depressed. She first drank while a senior in high school, and first became intoxicated in her 20s. Applicant tried to abstain about six times between 1991 and 2002, but failed to maintain her sobriety. She has been sober since January 2002. (Tr. 35 to 41, 71, 73)

Applicant started drinking alcohol in 1984 as a senior in high school. Her consumption increased in 1991 when her former husband was incarcerated and she drove every other weekend to another state to visit him. In the intervening weeks she was alone with her son, and in her depression and loneliness drank a six pack of beer at night, usually on the weekends. Applicant has five arrests for driving while under the influence of alcohol between 1992 and 2002, and two arrests for disorderly conduct and/or public intoxication in 1996 and 2001. She also drove while intoxicated by her own admission about 24 times from 1996 to 1997 but was not arrested for those incidents. Applicant attended four alcohol treatment, education, or awareness programs between 1992 and 2002. Applicant also had a 1988 driving under the influence offense. (Answer; Tr. 42 to 56, 59, 61; Exhibits 3 to 12)

Applicant's specific driving under the influence (DUI) arrests and convictions, and her public intoxication arrests and dispositions, are as follows:

SOR allegation and Offense Date	**Court Disposition**	**Record Evidence**
1.b. DUI arrest. July 4, 1996 in Appellant's hometown, DUI and red light violation.	For the 1992 arrest, attended alcohol counseling and offense dismissed (not listed in 1.b. but admitted at hearing. 9/17/96 Appellant pled guilty to the red light violation and a reduced charge of physical control. Fined $200, 180 days suspended jail sentence, driving privileges restricted. Fined $75 for the red light violation.	Tr. 42, 45 to 47; Exhibit 3
1.c. Arrested in her hometown on November 13, 1996 for public intoxication.	Served eight hours in jail and the case was closed by the local prosecutor.	Tr. 47; Exhibit 4
1.d. DUI and reckless operation arrest May 4, 1998, in her hometown	October 6, 1998, pled guilty to DUI, sentenced to 180 days in jail with 177 days suspended, $1,000 fine with $800 suspended, one year supervised probation, 180 days suspended license and mandatory attendance at a three day alcohol program. Reckless driving charge dismissed.	Tr. 48; Exhibit 5
1.f. DUI and parking in a fire lane arrest on March 31, 1999.	Fined $595, restricted driving license for one year, three years unsupervised probation, and ordered to three day alcohol awareness program.	Tr. 50; Exhibit 8
1.h. Arrested for	Served 8 hours in jail, fined $25, and court costs of $54.	Tr. 54;

disorderly conduct and public intoxication in her hometown on 9/24/01.		Exhibit 10
1.i. DUI, traffic violation, and seatbelt violation arrest in her hometown on January 26, 2002.	Found guilty of DUI on May 29, 2002, fined $1,500 with $1,100 suspended, 180 days in jail with 170 suspended, two year license suspension, 12 months supervised probation. Other charges were dismissed.	Tr. 55; Exhibit 11

Applicant's alcohol education and/or treatment sessions or programs are as follows:

SOR Allegation	**Program and result**	**Record Evidence**
1.e. Residential DUI program in her hometown on January 24, 1999.	Residential program after May 1998 arrest for DUI as alleged in subparagraph 1.d. Alcohol consumption judged problematic.	Tr. 48, 49; Exhibit 7
1.g.	Weekend Intervention program at local university from October 29 to 31, 1999, for conviction in subparagraph 1.f. Diagnosed as alcohol dependent and enrollment in an outpatient program recommended.	Tr. 50; Exhibit 9
1.j.	Attended program under care of certified chemical dependency counselor and completed Standard Outpatient I treatment on October 25, 2002.	Tr. 62; Exhibits 12 and 15
1.b. as amended	1992 alcohol education program after arrest	Tr. 45

Applicant had 20 months of sobriety until her arrest in March 1999. She used her church participation as her support mechanism, but relapsed anyway. Applicant has not consumed alcohol since January 2002 during her current term of sobriety. She is again claiming that she is maintaining her sobriety through the support of her family and church participation. The alcohol treatment program in 1999 recommended Applicant participate in a outpatient chemical dependency program to help her maintain her sobriety, but Applicant has not done so to the present time. Applicant claims the shame of spending 10 days in jail in 2002 showed her she needed to change her lifestyle away from alcohol. Applicant considers herself an alcoholic, and was diagnosed as alcohol dependent by the alcohol counselors in 1999. (Tr. 22, 23, 52, 53, 55, 63, 64; Exhibits 9 and 15)

Applicant did not disclose to the treatment program providers in 1999 the correct number and dates for her prior DUI and other alcohol-related offenses. The program staff had to draw that information out of her. Applicant did not fully disclose her alcohol history in 2002 and received only the standard basic outpatient treatment from her latest formal alcohol treatment program. (Tr. 56 to 59, 62; Exhibit 9)

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.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

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. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline G - 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. E2.A7.1.1.

Conditions that could raise a security concern and may be disqualifying include:

(1) Alcohol-related incidents away from work, such as driving while under the influence. E2.A7.1.2.1.

(4) Evaluation of alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program. E2.A7.1.2.4

(5) Habitual or binge consumption of alcohol to the point of impaired judgment. E2.A7.1.2.5

(6) Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed

medical professional and following completion of an alcohol rehabilitation

program. E2.A7.1.2.6

Conditions that could mitigate security concerns include:

(3) Positive changes in behavior supportive of sobriety. E2.A7.1.3.3.

CONCLUSIONS

In the SOR, DOHA alleged Applicant had DUI convictions, public intoxication arrests, and court-ordered participation in alcohol education and counseling programs. Disqualifying Conditions (DC) 1, DC 4, DC 5, and DC 6 apply. Applicant's history with alcohol dates to at least 1988, and shows a chronic problem with controlling her alcohol consumption. During that time period she spent 13 days in jail, and was in four alcohol education programs. She admits she is an alcoholic, and the professional counselors found she had an alcohol dependence. She tried sobriety at least once, and is in another period of sobriety of slightly over two years duration, but in the past she has relapsed while using the same support mechanisms of her family and church participation. She has not followed recommendations to enroll in a professionally-directed outpatient program to maintain her sobriety. Anyone with a history of DUI arrests like Applicant's record needs more than a self-initiated and supported sobriety program like Applicant's self-help program. This history shows Applicant has little or no control over alcohol in her life and needs to follow the recommendations given her since 1999 by the professional alcohol counselors. The Government established by substantial evidence each of the allegations in the SOR.

The Mitigating Condition (MC) that might apply would be MC 3. However, the longevity and intensity of Applicant's alcohol dependency or alcoholism makes her current actions and attitude insufficient to confirm that there are truly positive changes in her behavior that will support sobriety for many years or for the remainder of Applicant's life. This possible MC does not overcome the DC applicable in this case. Applicant has not completed an outpatient rehabilitation program with aftercare recommendations, has not participated in Alcoholics Anonymous or similar organization on a regular basis, nor received a favorable prognosis from a recognized alcohol treatment program, all of which might have allowed MC 4 to apply. In fact, Applicant did not fully disclose her DUI arrest history to the professional counselors in 1999, obviously trying to minimize her alcohol history because of the shame she felt. Applicant chose instead to rely on the same kind of sobriety program that led to a prior relapse in 1999, coupled with the memory of her incarceration for 10 days in 2002 and the shame of her arrests. For someone with her history of DUI arrests, and even her confessed 24 driving incidents without arrests in 1996 and 1997, her self-imposed sobriety is not persuasive that a relapse will not reoccur. Considering all of the evidence, I conclude this guideline against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline G: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

DECISION

In light of all of 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.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).