

DATE: January 31, 2007

Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16936

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esquire, Department Counsel

FOR APPLICANT

Kathleen E. Voelker, Esquire

SYNOPSIS

Applicant's alcohol abuse--punctuated by alcohol-related arrests in January 1987, March 1991, December 1994, December 1996, and September 1999--was not mitigated because Applicant demonstrated little insight into his alcohol abuse and resumed drinking after alcohol treatment. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 12 August 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of alcohol consumption. [\(U\)](#) Applicant answered the SOR 12 September 2005, and requested a hearing. DOHA assigned the case to me 9 December 2005 and I convened a hearing 23 February 2006. DOHA received the transcript 6 March 2006.

FINDINGS OF FACT

Applicant admitted the Guideline G (Alcohol) allegations of SOR. Accordingly, I incorporate his admissions as findings of fact. He is a 56-year-old logistics analyst for a defense contractor seeking to retain the access to classified information he has held since 1967, when he enlisted in the U.S. Marine Corps. He retired from the Marine Corps in 1993 as a Master Gunnery Sergeant (paygrade E-9, the highest enlisted paygrade). He has been employed in the defense industry continuously since then.

Applicant has a history of alcohol abuse from approximately 1966 to July 2003, punctuated by five alcohol-related arrests. Applicant began drinking in high school, and drank to excess and to the point of intoxication periodically while in the Marine Corps. Nevertheless, he has never had work-related issues over his drinking, either while in the military or after his retirement.

In 1982, Applicant experienced a period of increased alcohol consumption when his wife died of cancer, leaving him to raise their young son alone. In January 1987, he was arrested for DUI after attending a party where he said he had eight

draft beers over six hours. According to Applicant, he swerved to avoid a pothole, and was stopped by local police (G.E. 2). He was later convicted of negligent driving and fined (Answer; G.E. 2, 7).⁽²⁾ Later that year, he the Marine Corps promoted him to Master Gunnery Sergeant.

Between July 1987 and July 1988, Applicant was assigned to a remote, overseas post, unaccompanied by his son, who remained in the U.S. with grandparents. Applicant began to abuse alcohol regularly, because one of the main social outlets on post was hanging out at the staff club.

When Applicant returned to the U.S. in July 1988, he re-established his household with his son, and his drinking returned to his pre-July 1987 levels. However, his drinking increased, and by 1991, he was abusing alcohol again (Tr. 47-48). In March 1991, he was again arrested for DUI. However, this charge was dismissed and eventually expunged from his record.

Applicant retired from the military in 1993, and has been continuously employed in the defense industry since then. However, after retirement, the pace of his drinking increased. In December 1994, Applicant was arrested for DUI at the exit gate in an airport parking lot. He had consumed two martinis on his flight, two or three more martinis during a layover, and one more martini while on his way to baggage claim. He failed a field sobriety test and a breathalyzer test. He eventually pled guilty, spent a day in jail, was fined, and ordered to complete an alcohol safety action program (ASAP). He completed the eight weekly ASAP sessions in March 1995 (G.E. 2).

Applicant did not stop drinking after his 1987 and 1991 DUI arrests, and after his 1994 DUI arrest only stopped drinking during the eight weeks he attended ASAP (Tr. 66). After ASAP, he resumed drinking and was soon drinking to excess. In December 1996, was charged with DUI after swerving to avoid a pothole on his way home from an evening of drinking. He failed a field sobriety test and a breathalyzer test. Again he pled guilty, received 60-days suspended jail time and a fine, and was ordered to install an ignition interlock system in his car, attend another ASAP (now consisting of 12 weekly group therapy sessions with an ASAP-sponsored therapist), and attend two Alcoholics Anonymous (AA) meetings weekly for a year. He successfully completed the ASAP requirements in January 1998 (G.E. 5). Again, he only stopped drinking while attending the ASAP (Tr. 66). Other than those two brief periods of abstention, he never tried to stop drinking completely because he did not think he had a problem (Tr. 74-75).

In September 1999, was arrested for DUI when he was observed swerving off the road on his way home from a bar (G.E. 2).⁽³⁾ He failed both a field sobriety test and a breathalyzer test. Immediately after his arrest, he obtained counsel, who recommended that Applicant seek an alcohol evaluation (G.E. 3; Tr. 67). As a result of that evaluation, he was referred to an alcohol treatment program, which in turn recommended he complete Level II alcohol treatment, consisting of intensive outpatient treatment. Applicant received Level II alcohol treatment from November 1999 to January 2000 for a condition diagnosed as alcohol dependence (SOR, Answer). After completing the intensive inpatient phase of his treatment, Applicant entered the aftercare phase and attended 48 sessions between January 2000 and August 2000 (G.E. 1).⁽⁴⁾ He also attended court-required AA sessions between June 2000 and August 2000.

After his arrest in September 1999, Applicant was indicted for felony DUI (third DUI within 10 years) in December 1999 (G.E. 1). Applicant was arraigned in January 2000 (G.E. 6), pled not guilty, and attempted to waive his right to trial by jury (and thus be tried by judge alone). The prosecuting attorney objected, and the case was continued to June 2000, at which time Applicant changed his plea to guilty and was found guilty of felony DUI as alleged. The judge ordered a pre-sentence report and released the Applicant on bond providing that he refrain from using alcohol, attend at least 5 AA meetings per week, and provide attendance logs confirming those meetings at his sentencing hearing, which was scheduled for August 2000.

In August 2000, Applicant was sentenced to five years imprisonment and fined. The judge suspended all but two months imprisonment conditioned on Applicant's good behavior for five years from his release from prison, indefinite supervised probation, and completion of the alcohol treatment aftercare program as well as AA meetings twice a week as required by the treatment program. In rendering this sentence, the judge relied on the pre-sentence report he requested in June 2000. In that report, Applicant stated his intent to continue in treatment services and stated that he was currently attending the treatment aftercare program (two group meetings per week) and AA meetings (five per week). In describing his past alcohol use to the probation officer, "he admits his use was problematic and admits to being an

alcoholic." (G.E. 1)

Applicant completed his prison sentence in late September 2000.⁽⁵⁾ He was released from supervised probation in July 2001 (G.E. 6). He attended the aftercare program until about January 2001 (G.E. 2; Tr. 51) and attended AA meetings, apparently until at least July 2001. Beyond that date, the evidence of his AA attendance is contradictory. In his June 2002 sworn statement (G.E. 2), Applicant asserted that he had not consumed any alcohol since his 1999 arrest and continued to attend AA to at least June 2002. However, in his June 2003 sworn statement (G.E. 3), he stated that he stopped going to AA in December 2001, about the same time he resumed drinking alcohol.⁽⁶⁾

While he was attending AA, Applicant asserts that he had a sponsor who told him in autumn 2000 not to start the 12-step program because he did not have a long enough period of sobriety (Tr. 86). Applicant admits that when he attended AA, he publicly acknowledged that he was an alcoholic (Tr. 80). His sponsor dropped out of AA in early 2002 (Tr. 61), then died (Tr. 70).⁽⁷⁾ He never got a new sponsor, and his AA attendance began to taper off, until he stopped going in autumn 2002. He felt burned out listening to the same people with the same problems (Tr. 61).

At hearing, Applicant acknowledged that he admitted to being diagnosed as alcohol dependent in his answer to the SOR. He now asserts that no one at the treatment program ever told him he was diagnosed as alcohol dependent, that he assumed he was diagnosed as alcohol dependent because the treatment program accepted him (Tr. 53-54).⁽⁸⁾ Applicant uses the words alcohol dependent and alcoholic interchangeably. He now considers himself not alcohol dependent, and not now an alcohol abuser (Tr. 62). He testified, contrary to his June 2003 sworn statement (G.E. 3), that he resumed drinking at the company Christmas party in December 2002, when he had two beers.⁽⁹⁾ He now feels safe to consume alcohol on occasion: "social events, weddings and parties, company parties, company events. Sometimes on travel because on travel quite often we get together before, during and after dinner, and continue on with discussions of what we were doing. . ." (Tr. 55). He testified that he tried to limit his alcohol to two drinks per one occasion, maybe three on an occasion he did not remember (Tr. 56), then hedged in response to his counsel's question that "I know that I have not had more than four" on any occasion, and does not drink more than twice per week (Tr. 57). He thinks of himself as sober since September 1999. However, he acknowledged that the counselors at the treatment program told him to abstain from alcohol (Tr. 70-71). He equivocated on whether he was warned about even drinking in moderation, although he understands "it could be a problem for a real severe alcoholic (Tr. 71)."⁽¹⁰⁾

He did not discuss resuming alcohol consumption with anyone, but believes he is justified because of his changed lifestyle. He believes he can continue to control his alcohol consumption.⁽¹¹⁾ He never drinks and drives. He does not hang out with his friends in bars and drink as he did when he was having his arrests. He no longer associates much with his old drinking friends. He thinks he has more insight into himself and the fact that he was self destructing (Tr. 82). He now takes better care of himself.

Applicant has an exemplary work record. His supervisors and coworkers highly recommend him for access to classified information. He has never had a security violation.

POLICIES AND BURDEN OF PROOF

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline G (Alcohol Consumption).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified

information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. ⁽¹²⁾

CONCLUSIONS

The government established a case for disqualification under Guideline G disqualifying conditions 1 and 5. ⁽¹³⁾ I have also considered, in part, disqualifying conditions 4 and 6. ⁽¹⁴⁾ Applicant failed to mitigate the security concerns. In reaching this conclusion, I have examined the facts of this case under mitigating conditions 2 ⁽¹⁵⁾ and 3, ⁽¹⁶⁾ and have given partial consideration to mitigating condition 4. ⁽¹⁷⁾ Mitigating condition 1 ⁽¹⁸⁾ does not apply as Applicant's five DUIs over 12 years (the last three within five years) constitute a clear pattern of abuse. Nevertheless, Applicant's last DUI occurred a number of years ago, and there is no indication that Applicant currently abuses alcohol. Similarly, Applicant has made changes in lifestyle that are supportive of his current level of consumption. He successfully completed alcohol treatment and aftercare and abstained from alcohol for more than a year. He was at one point frequently participating in AA (although one can question what he got out of it). However, he has no favorable prognosis from recovery, and more tellingly under the facts of this case, consulted no medical personnel or alcohol abuse counselors before resuming drinking.

This mitigating evidence is insufficient to overcome the security concerns raised by Applicant's alcohol abuse. He has a long history of drinking to excess, with adverse consequences, five arrests between January 1987 and September 1999. While he has moderated his conduct such that he has had no alcohol-related arrests since September 1999, his resumption of alcohol consumption casts doubt on his long-range ability to avoid excessive alcohol consumption. His June 2003 statement asserts that he resumed drinking in December 2001 while on company travel. His testimony states he resumed at a company Christmas party in December 2002. ⁽¹⁹⁾ It seems that Applicant may have resumed drinking while on company travel, and then felt safe to expand the number and types of occasion that he permits himself to have two drinks. Even if he does not drink on all of those occasions, he is drinking on more occasions than he described in June 2003. The changes Applicant has made in his lifestyle have been supportive of avoiding alcohol-related incidents, but not necessarily of sobriety, particularly as defined by AA and Applicant's treatment program, both of which urged him to abstain. More troubling is the fact that Applicant appears to have no insight into the potential problems raised by his continued consumption of alcohol, or the problems caused by his excessive consumption of alcohol. ⁽²⁰⁾ One view of Applicant's behavior over the years suggests that after each of his DUI arrests, Applicant did what was required to obtain a favorable sentence without moderating his behavior. Faced with the more serious sentence he faced with the felony DUI charge in September 1999, he moderated his behavior over a longer period of time--and was under potential penalty until September 2005--to obtain a much less onerous sentence. He did not absorb--or did not fully absorb--the lessons of his alcohol treatment program, his after care program, or his AA participation. Another view of his conduct is that he learned his lesson after his 1999 arrest, made changes in his lifestyle, and has consumed alcohol in moderation for several years without further incident. Each view may be as likely as the other. But given Applicant's general credibility issues, his acknowledging and recanting his alcohol dependence/alcoholism, and the apparent increase in his frequency, if not amount, of his drinking, the former seems more likely. In any event, the record evidence establishes his alcohol abuse and he had the burden of establishing extenuation, mitigation, or rehabilitation to support the clearly consistent standard--a burden he did not meet. While his alcohol consumption appears under control currently, his renewed consumption after completing an alcohol treatment program raises ongoing concerns. I cannot conclude that he is unlikely to return to abusive levels of drinking or experience more alcohol-related incidents. Accordingly, I resolve Guideline G against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline G: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Subparagraph d: Against Applicant

Subparagraph e: Against Applicant

Subparagraph f: Against Applicant

Subparagraph g: Against Applicant

Subparagraph h: Against 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 denied.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. However, G.E. 4 suggests that he pled guilty and was found guilty of the DUI.
3. In his June 2002 sworn statement (G.E. 2), Applicant reports drinking four beers and two shots of tequila in about four hours. In his June 2003 sworn statement (G.E. 3) he reports four beers and three shots in 3-4 hours, and added the detail that he was swerving because he was trying to extinguish his cigarette. In any event, his B.A.C. at the time of arrest was .22%, nearly three times the legal limit under state law (Tr. 76).
4. The only record of Applicant's participation in this program is a one-page letter from the program manager that Applicant's counsel provided to the company security officer, and which became part of G.E. 1. The letter, dated August 2000, was obtained by Applicant the same day to comply with the judge's June 2000 order (G.E. 6) that Applicant provide proof of attendance at five AA meetings per week at his sentencing hearing in August 2000. The letter corroborates only Applicant's participation in the aftercare program, but does not characterize that participation. The program manager stated that additional information could be provided with an authorized release.
5. And thus, the suspension of his remaining confinement would run to late September 2005.
6. "Since completing my treatment, I have consumed alcohol on occasion. For the past one and a half years I have traveled on official business approximately six times. During this travel, I dine out with my fellow team members. During these dinners out, I have consumed **one or two beers or one or two glasses of wine, before or during dinner on approximately three of the five nights we are on travel.** I am never the driver on the nights that I have consumed any alcohol. On the nights that I do not consume alcohol, **I am the designated driver, even though I do not have driving privileges.** I do this to ensure the safety of my team members. I am all to [sic] aware of the consequences of drinking and driving, and have no desire to experience them again. I do not consider myself to be a social drinker. **I am an alcohol [sic], but the occasions I drink are rare, and I believe that I can control my drinking at this time.**" (G.E. 3, emphasis added)
7. Applicant's time-line contains some inconsistencies. He states that he had a sponsor in autumn 2000 (Tr. 86) who dropped out of AA in early 2002 (Tr. 61), yet only had this sponsor for nine months (Tr. 80). The time line also conflicts

with Applicant's June 2003 sworn statement (G.E. 3). Without trying to definitively reconcile the conflicts, it seems more reasonable that Applicant obtained a sponsor around October 2000, the sponsor dropped out of AA around August 2001, Applicant's AA attendance began to taper off and ended entirely in December 2001, when he resumed drinking. Of course, this conflicts with his testimony that he resumed drinking at the company Christmas party in December 2002 (Tr. 54).

8. A position he reiterated elsewhere in his testimony (Tr. 68-69, 79).

9. Applicant testified that he resumed drinking because "I'd been dry for quite some time, I'd been through a lot of therapy. . .the outpatient treatment and the AA and the After Care, and I was feeling that I was confident enough that had changed my life enough that I'd be able to control having a beer or two on occasion." (Tr. 55)

10. In similar fashion, he equivocated about whether he had been told about being diagnosed as alcohol dependent/alcoholic (Tr. 79).

11. In support of his argument, Applicant introduced exhibit L (A.E. L), a study purporting to show that some individuals who have been diagnosed as alcohol dependent can resume drinking without reverting to patterns of abusive consumption. I have considered this report, but given it little weight in assessing Applicant's clearance worthiness, for a couple of reasons. First, the report itself contains so many caveats and exceptions that I do not find it helpful in analyzing this case. Second, I have no information--other than wild speculation--that would permit me to extrapolate from the study to a conclusion that Applicant can maintain his current low level of alcohol consumption.

12. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).

13. 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 abuse; E2.A7.1.2.5. Habitual or binge consumption of alcohol to the point of impaired judgment;

14. 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; 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. I have considered these disqualifying conditions in part for a number of reasons. First, although the program manager is not designated a licensed clinical social worker, she does meet licensing requirements for a designation routinely accepted for working in recognized treatment programs. Second, Applicant admitted that he sought an alcohol evaluation after his 1999 DUI, and accepted referral to an alcohol treatment program. Third, Applicant admitted that he was diagnosed as alcohol dependent while in the alcohol treatment program, and relied on his acceptance of that fact and completion of the alcohol treatment program to influence the judge to award a comparatively light sentence, and release Applicant early from supervised probation. Fourth, the judge clearly accepted the program as a recognized alcohol treatment program in awarding a comparatively light sentence, ordering Applicant to complete the program and follow the AA recommendations of the program, and releasing Applicant from supervised probation in July 2001. Finally, common sense requires that the potential consequences of renewed drinking by an individual who has Applicant's DUI history and length of alcohol treatment and AA be carefully considered regardless of the established qualifications of the program.

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

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

17. E2.A7.1.3.4. Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed. . .outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or similar organizations, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a . . . licensed clinical social worker who is a staff member of a recognized alcohol treatment program. I have done so for reasons analogous to the reasons stated in footnote 14.

18. E2.A7.1.3.1. The alcohol related incidents do not indicate a pattern;

19. Part of the difficulty in this case is the fact that I found much of Applicant's testimony not to be credible. I have highlighted some of the factual inconsistencies in the record. There are many others that I have not highlighted. Beyond that is my sense that Applicant was being evasive in his answers to both Department Counsel and me.

20. Beyond testifying that he stopped drinking in September 1999 because he was tired of being in trouble (Tr. 84). Although Applicant stated that he has accepted responsibility for his past actions, his reported statements tell a different story. When Applicant described the circumstances of his DUIs in his statement to his probation officer (G.E. 1) and government investigators (G.E. 2, 3), he made self-serving statements attributing his police stops to factors other than his alcohol consumption. Three of the police stops involved his being observed driving erratically, which he attributed to swerving to avoid potholes (twice) and while trying to extinguish his cigarette. Not once does he acknowledge that his alcohol consumption had, or could have had, any effect on his driving--including the arrest when his BAC was .22%.