KEYWORD: Alcohol

DIGEST: Applicant, who has been drinking since about 1961, started abusing alcohol in the 1990s. Alcohol consumption concerns persist because he continues to consume alcohol after being treated for medically diagnosed alcohol dependence. Clearance is denied.

CASENO: 04-07255.h1

DATE: 03/31/2006

DATE: March 31, 2006

In Re:

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

Applicant for Security Clearance

ISCR Case No. 04-07255

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Department Counsel

FOR APPLICANT

Thomas Albin, Esq.

SYNOPSIS

Applicant, who has been drinking since about 1961, started abusing alcohol in the 1990s. Alcohol consumption concerns persist because he continues to consume alcohol after being treated for medically diagnosed alcohol dependence. Clearance is denied.

STATEMENT OF CASE

On April 11, 2005, 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 April 25, 2005, Applicant answered the SOR. He requested a hearing before a DOHA administrative judge, and on September 7, 2005, I scheduled a hearing for September 29, 2005. At the hearing, six government exhibits were admitted and testimony was taken from Applicant and his spouse, as reflected in a transcript received on October 18, 2005. At the government's request, I took administrative notice of extracts of the Diagnostic and Statistical Manual of ental Disorders, 4th Ed. Text Rev. (DSM-IV-TR).

FINDINGS OF FACT

DOHA alleged Applicant consumed alcohol, at times to excess and intoxication, from about 1961 to at least July 2004; was detoxified from alcohol at a local hospital in the summer of 1999, but declined recommended inpatient treatment; received treatment for diagnosed alcohol dependence from May 17, 2000 to June 22, 2000; participated in a research project from March 2001 to September 2003 and continued to file progress reports on motivation to drink; received treatment from January 27, 2003 to April 15, 2003, for alcohol dependence; and continues to drink alcohol. Applicant admitted the allegations with the exception of providing ongoing progress reports in conjunction with the research

project (SOR ¶ 1.d.). 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 65-year-old mechanical service engineer (maintenance mechanic), who has been employed by the same defense contractor since September 1974. Applicant started drinking alcohol at age 20 or 21 when he was in the U.S. military reserves. He consumed four or five beers while socializing in bars with friends on one, and sometimes both, weekend days. His drinking remained the same after his marriage in August 1974 until the 1990s when he began to need more alcohol to obtain the desired effect. By about 1997, he was drinking about a pint of whiskey and a few beers per day. In summer 1999, Applicant was out of work for about six weeks due to back problems. To help with the back pain and boredom, he started drinking three quarts of whiskey and two to four six-packs of beer per week, with negative impact on his liver. On the referral of his primary physician, Applicant underwent detoxification treatment for three days in a local hospital. His physician recommended he receive inpatient treatment and abstain completely from alcohol. Applicant declined an inpatient program in favor of Alcoholics Anonymous (AA). Over the next three years, he attended AA "off and on."

With the help of AA, Applicant managed sobriety for about three months, but by 2000 he was drinking 12 beers and a quart of whiskey on the weekends plus another two quarts of whiskey over the course of the work week in the evenings. His drinking was a source of marital stress, as his spouse was concerned about the health impacts of the alcohol. In mid-May 2000, Applicant admitted himself to an alcohol treatment program where he was diagnosed as suffering from alcohol dependence. Applicant attended all sessions as required, including AA twice weekly, but was given a guarded prognosis on his discharge from the program six weeks after admission. In the opinion of his primary clinician, concurred in by the clinical supervisor, Applicant had not gained a complete understanding of addiction, had not surrendered to his alcoholism, had minimized the importance of attending his aftercare group, and had not developed a relapse prevention plan.

Applicant reduced his alcohol consumption to beer primarily with an occasional shot of whiskey after his discharge from the treatment program. In March 2001, he volunteered for a research project at a local medical center dealing with motivations to drink. Applicant lacked insight into what caused him to drink and he thought it would prove beneficial. Applicant attended outpatient counseling and other sessions for a couple of months. About once every three of four months thereafter until at least September 2003, he filled out a questionnaire for the research project. He did not appreciably change his drinking. At least three or four times, he consumed alcohol in similar amount to what he drank before his inpatient admission in May 2000, but managed to "catch himself" after a few days of heavy drinking.

Applicant abstained from drinking for a short time after his supervisor talked to him about his drinking (appeared to be hungover in the mornings) in October 2002. Around 4:00 a.m. on January 3, 2003, Applicant woke up with a cough. He consumed a shot of whiskey and "two slugs" of beer. A coworker reported smelling alcohol on Applicant's breath on his arrival at work at around 7:00 a.m. that day. Applicant's supervisor was unable to detect alcohol, but he allowed Applicant to return home that day rather than remain at work. Applicant was referred to his company's employee assistance program because of suspected alcohol abuse.

On the recommendation of the employee assistance program at work, Applicant was evaluated in late January 2003 by a licensed clinical social worker affiliated with a community health center. Applicant described his current drinking as a half pint of whiskey and a couple of beers, at worst one quart of whiskey plus four to five beers between Friday and Saturday nights. Applicant was diagnosed as suffering from alcohol dependence and referred for three months of weekly substance abuse group treatment and AA meetings. Applicant stopped drinking whiskey, and no longer kept beer in his residence. Yet, he continued to drink six to eight beers weekly, buying two or three at a time. On his discharge from the group sessions in mid-April 2003, Applicant was referred to AA and given a guarded prognosis as he continued to have problems maintaining his sobriety and was in need of a more intense level of treatment.

On September 9, 2003, Applicant was interviewed by a Defense Security Service (DSS) agent to explain his past treatment for alcohol abuse that he had listed on an August 2002 security clearance application. Applicant related he began drinking more in the late 1990s for reasons he did not fully understand. Concerned over his drinking of up to 12 beers and a quart of whiskey on the weekends, he admitted himself for alcohol treatment (seven days as an inpatient followed by outpatient counseling) in about May 2002. He indicated he had reduced his consumption of alcohol to three or four beers once monthly "without any noticeable affect," and sometimes one or two shots of whiskey. He also acknowledged having had "three or four bad spells," where he relapsed into the levels that predated his May 2000 treatment, most recently about a year ago, which led him to the outpatient counseling. He denied there were any specific events that led him to seek treatment. Applicant averred he was attending AA three times weekly, which he planned to continue, and expressed his intent to keep his alcohol consumption to "just occasional beers at special functions."

On September 16, 2003, Applicant was reinterviewed specifically about the incident at work that led to his counseling in 2003. Applicant claimed he "had forgotten some of the facts leading to that counseling." He admitted a coworker had reported smelling alcohol on his breath at work, which led to his supervisor advising him of the company's employee assistance program and a referral to the community health center. Applicant admitted he was still drinking against the advice of his primary physician, as he felt he had his alcohol under control:

I still attend Alcoholics Anonymous two to three times weekly and feel much better. I feel I have my alcohol consumption under control and only consume alcohol about two or three times monthly. I normally do not consume alcohol at home and only consume one or two beers at a time with friends or at a bar, and I now am avoiding whiskey most of the time. (Ex. 3)

In response to alcohol interrogatories from DOHA, Applicant indicated on July 15, 2004, that he was still drinking beer, having last consumed two 12-ounce beers on July 11, 2004. As for the frequency of his drinking, Applicant responded "8 to 10 12 oz. beers weekly, I may go 4 days without. Then have a cold one. When I try to drink whiskey 2 or 3 ounces my stomach bothers me & I get sick." He denied being intoxicated since June 1996 or that he was drunk when the coworker complained of alcohol on his breath in January 2003, but he had agreed to alcohol counseling to prevent himself from relapsing into his "1996 era."Applicant indicated he had not attended AA for about a year, and that prayer was working for him.

As of September 2005, Applicant was still drinking two to three beers on occasion, most recently in late July/early

August 2005 ("I was just thirsty. I was working outside, wanted something cold to drink." Tr. 49). He had not lost the taste for beer although no longer craved it. He considered his drinking to be under control, although his goal was to stop drinking completely. Applicant had not attended an AA meeting since 1993 (" I just didn't feel that I needed them, needed the meetings, which probably isn't true, but I felt by just drinking-occasionally drinking beer, that I had it under control." Tr. 47). He planned to resume AA meetings in the mornings on his retirement, as he had seen others retire and fall back into drinking. Applicant's spouse did not consider his current drinking to be a problem.

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 guideline is 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.)

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:

The Directive does not prohibit drinking per se and there is no evidence Applicant drank to excess until the 1990s. However, by 1999, Applicant was drinking three quarts of whiskey and two to four six-packs of beer per week, with negative impact on his liver. His primary physician ordered him into detoxification and advised him to give up alcohol completely. Applicant continued to drink to excess, and in May 2000 he entered an alcohol rehabilitation treatment facility where he was diagnosed as alcohol dependent. At discharge, he was given a guarded prognosis, and the clinician's concerns were subsequently borne out in his ongoing consumption of alcohol against medical advice with relapses into heavy drinking.

After a coworker reported smelling alcohol on Applicant's breath in January 2003, Applicant attended group counseling for alcohol dependence. On discharge in mid-April 2003, his primary clinician, a licensed clinical social worker, gave him a guarded prognosis as he was in need of a more intensive alcohol treatment program. Alcohol consumption disqualifying conditions ¶ 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.A7.1.2.4. *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.A7.1.2.5. *Habitual or binge consumption of alcohol to the point of impaired judgment*; and ¶ 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*,[(2)] apply in evaluating Applicant's suitability for continued access.

As of September 2005, Applicant reported drinking two or three beers per occasion. While this represents a positive change in his behavior from previous drinking patterns (*see* mitigating condition ¶ E2.A7.1.3.3.), the diagnosis of alcohol dependence warrants consideration of ¶ E2.A7.1.3.4., which requires successful completion of inpatient or outpatient rehabilitation along with aftercare requirements, frequent participation in meetings of AA or similar organization, abstention 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. Applicant meets none of those conditions, but argues for fairness and a commonsense application of the adjudicative guidelines, citing his established history of 31 years on the job without any problem and little risk of his drinking having an impact in the future since he drinks at home and falls asleep.

The DOHA Appeal Board has long held that the mere presence or absence of an adjudicative guideline for or against clearance is not solely dispositive of a case. The administrative judge, who must consider applicable adjudicative guidelines in light of the record evidence as a whole,[(3)] has the discretion to deviate from the literal terms of a pertinent adjudicative guideline where there is a rational basis to do so.[(4)] Applicant deserves credit for his many years of service to his employer, and for pursuing counseling on his own. Yet, significant concerns persist for his rehabilitation. Despite his participation in two alcohol treatment programs, Applicant still lacks insight into what motivates him to drink. Recent history reflects at best a tenuous control over his drinking. During his first DSS interview in September 2003,

Applicant reported drinking one to three beers maybe once a month at special functions, and sometimes one or two shots of whiskey. (Ex. 2) One week later, he told the DSS agent he was consuming one or two beers at a time with friends at a bar two or three times monthly. Whether he was drinking one or three times per month as of September 2003, by July 2004 he was consuming eight to ten 12-ounce beers weekly, a significant increase over the year before. Even his consumption of two to three beers per occasion as of September 2005 is contrary to therapeutic advice, and he does not have a support network in place to assist him in his efforts to remain sober. The government's expressed concerns about his drinking, which should have been clear to him with the issuance of the SOR, have not led him to resume his affiliation with AA or to cease drinking. SOR ¶¶ 1.a., 1.b., 1.c., 1.d., 1.e., and 1.f. are resolved against Applicant as he has failed to meet his burden of overcoming the security significant alcohol consumption concerns.

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

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).

2. Applicant's primary physician has advised him to not drink alcohol, but there is no evidence of a diagnosis of alcohol abuse or alcohol dependence from a credentialed medical professional in the record. There is a clear evaluation of alcohol dependence from a LCSW, so ¶ E2.A7.1.2.4. applies. While ¶ E2.A7.1.2.6. on its face applies only where there is a confirmed diagnosis of alcoholism by a credentialed medical professional, there is no rational basis to exclude that factor from consideration where there is an evaluation of alcohol dependence by a LCSW. The evaluation by a LCSW is sufficient to invoke the requirements of ¶ E2.A7.1.3.4.

3. *See, e.g.*, ISCR Case No. 99-0500 (App. Bd. May 19, 2000).

4. See, e.g., ISCR Case No. 95-0912 (App. Bd. Feb. 27, 1997).