

DATE: August 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10457

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

William E. McCoy, Esq.

SYNOPSIS

Applicant continues to consume alcohol after having been treated for diagnosed alcohol dependence and being advised to abstain. There is no evidence of intoxication since 2004, but his drinking has increased since the dissolution of his marriage in 2005. Alcohol consumption concerns are not mitigated where there is an unacceptable risk of abusive drinking. Clearance is denied.

STATEMENT OF THE CASE

On May 13, 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 determine whether his clearance should be granted, continued, denied, or revoked. The SOR was based on alcohol consumption (Guideline G).

Applicant answered the SOR on June 28, 2005, and requested a hearing before a DOHA administrative judge. The case was assigned to me January 4, 2006. On March 2, 2006, I convened a hearing pursuant to notice dated January 13, 2006. Eleven government exhibits were admitted and testimony was taken from Applicant and the military officer in charge of the fleet technical support center where Applicant works as a contractor. A transcript of the hearing was received March 15, 2006.

FINDINGS OF FACT

DOHA alleged under Guideline G that Applicant consumed alcohol at times to intoxication, to include twelve beers daily, from 1979 or 1980 to at least December 2004; was diagnosed as alcohol dependent in October 1994 and referred to Level III alcohol rehabilitation treatment which he completed; was diagnosed in December 1996 as alcohol dependent and advised to abstain; received inpatient treatment for alcohol dependence in February 1997; was assessed

in December 2004 and diagnosed as suffering from alcohol dependence, in early partial remission, and advised to abstain from alcohol; and he continued to consume alcohol despite his treatments.

In his answer, Applicant admitted drinking to intoxication at times, but that he had changed the frequency and volume of his consumption in 1999 or 2000 to where it was no longer twelve beers per day. He admitted the alleged alcohol assessments and treatment for diagnosed alcohol dependence as well as consumption of alcohol thereafter "in a responsible fashion." His admissions are incorporated as findings of fact. After a review of the record evidence, I make the following additional findings:

Applicant is a 44-year-old retired Navy chief who works as a technician for a defense contractor. He holds an interim secret clearance for his duties, which include installing major sonar systems.

Applicant began to drink alcohol with any frequency when he entered on active duty in the U.S. military in 1982. Over the next two years he drank a few times but with no regularity while in training. From 1984 to 1988, he was assigned to a submarine, where he consumed alcohol about three times per week, three or four beers per occasion. That pattern continued while he served as a sonar technician instructor at submarine school from October 1988 to October 1991.

After he was transferred to submarine duty in October 1991, Applicant drank at least a six-pack of beer per day, gradually increasing to 12 beers daily, until about October 1994, when his wife told him it was time to end their relationship because of his drinking. Fearing that his spouse would leave him and take their children with her, Applicant sought alcohol treatment through his command on or about September 12, 1994. On October 14, 1994, he was assessed as alcohol dependent and referred to Level III alcohol rehabilitation treatment and four Alcoholics Anonymous (AA) meetings per week. Applicant completed the 30-day program and returned to duty. He remained abstinent for about 16 months, began drinking non-alcoholic beer, and then regular beer.

With a change of duty station in October 1995, Applicant was separated from his family for a few months. Costs associated with the relocation and commuting to see his family led to financial problems (repossession of their mobile home and loss of a car), and eventually a Chapter 7 bankruptcy filing in February 1996. By summer 1996, Applicant was drinking six to twelve beers per day. In about December 1996, his spouse asked him for a divorce. Applicant, who then consumed five to six beers, contacted a friend who became concerned enough to call 911. Applicant was brought to a local hospital where he spent the night pending an evaluation for depression.⁽²⁾ He was discharged in good condition directly to a military hospital where he was administered a drug test that was negative for all substances tested and underwent a suicide risk evaluation by a military clinical psychologist. Applicant was diagnosed as suffering from alcohol dependence and major depressive disorder (rule out), considered fit to return to military duty as he was not suicidal, and directed to undergo a full diagnostic interview in five days and to abstain from any derivative of alcohol.

On December 19, 1996, Applicant was reevaluated by the clinical psychologist. Applicant's mood and suicidal statements of the week before were attributed to alcohol-related bad judgment and he was assessed as alcohol dependent. Applicant was directed to return for his final disposition in two weeks to give the psychologist an opportunity to consult with staff to determine whether to commence administrative separation proceedings or to order Applicant into outpatient alcohol treatment. In the interim, Applicant was to attend AA, obtain a sponsor, and refrain from alcohol. On January 6, 1997, Applicant again presented at the naval mental health department where he reported he had been abstinent with no distress, attended AA twice weekly, but had no sponsor. Applicant was assigned to alcohol treatment and advised that should he violate any terms, the military psychologist would advocate for his administrative separation from the service.

From February 10, 1997 to February 21, 1997, Applicant received inpatient alcohol rehabilitation treatment at a military hospital for diagnosed alcohol dependence. Because he had completed inpatient treatment previously, his treatment team emphasized relapse prevention work and the behavioral component involved. Applicant, who had obtained an AA sponsor while awaiting his admission to treatment, attended at least seven AA meetings per week while in treatment. Recommendations at discharge included at least three to five AA meetings weekly (90 for the first 90 days), abstention from alcohol, continue step work in AA, obtain a permanent sponsor in AA, aftercare through the counseling assistance center at his present duty station, and additional help for any personal or family issues that could compromise his recovery. He was expected to do well provided he took responsibility for management of his alcoholism.

On March 7, 1997, Applicant was informed by his command that he was required to participate in the aftercare regimen in order to remain eligible for continued military service and that failure to complete the aftercare would constitute grounds for immediate suspension processing. Applicant attended AA for six months and was abstinent for about six to eight months before relapsing by choice. He did not feel the 12-step program was working for him and felt it was hypocritical of him to attend AA while drinking. By December 1997, he was drinking three or four 12-ounce beers per day, usually at home, although about once a week he stopped for a beer with coworkers after work.

On January 22, 2001, Applicant was interviewed by the Defense Security Service (DSS). Applicant indicated that he had completed one year of aftercare following his second completion of Level III alcohol rehabilitation treatment. He admitted that he was drinking alcohol despite being required by his military command to abstain, but averred it was not causing him any difficulty. Applicant told the DSS agent he was consuming about one or two beers once or twice weekly, and a glass of wine with dinner once in awhile. A military substance abuse counselor, to whom Applicant detailed his alcohol abuse history in December 2004, characterized Applicant's drinking as "dependent" during this period.

In early 2002, Applicant retired from the U.S. military at the rate of chief petty officer (E-07). He was employed as a technical writer/editor for a government agency for only four months when he left to take a defense contractor position working for fleet technical support, essentially performing the same duties he had when on shore duty in the military. Applicant has since stayed in that position and held an interim secret clearance through various changes of contract and corporate acquisitions.

Applicant made a conscious decision in August 2002 to cut back as he was drinking too much. On December 23, 2003, Applicant was reinterviewed by a special agent of the DSS about his drinking and alcohol rehabilitation treatment. Applicant expressed his belief that his current pattern of three or four beers per day was not a problem, and he expected that level of consumption to continue.

On December 9, 2004, Applicant responded to DOHA alcohol interrogatories. He indicated he was still drinking, albeit at reduced levels. He reported consuming one to two drinks per week since August 2004 with no effect on his performance or reliability.

At the request of DOHA, Applicant was evaluated on December 9, 2004, to obtain a medical prognosis of his current alcohol use and its effect on his ability to hold a clearance. Applicant reported to the evaluator, a counselor at a military alcohol rehabilitation program, (3) that he had engaged in dependent drinking from about September 1997 to August 2002, when he made significant behavioral changes by reducing his periodic use to one to two drinks once a week with a heavy use (12 drinks) at a social gathering in May 2004. After a mild heart attack in August 2004, he claimed a further reduction to one to two drinks every other week. In the opinion of the alcohol counselor, who did not have the records of Applicant's 1994 and 1997 inpatient stays available to him, Applicant met the DSM-IV criteria for alcohol dependence in early partial remission (i.e., continued use despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to be caused by or exacerbated by use of alcohol). Provided the use Applicant reported was accurate and provided his consumption remained minimal (one to two drinks every two weeks), the substance abuse counselor assessed Applicant's prognosis in terms of there being no indication of a recent problem. He made no recommendation as to whether Applicant's clearance should be continued as it was not within the scope of his practice.

In April or May 2005, Applicant and his spouse of almost 17 years separated. Applicant began to drink beer while cooking for himself and his drinking increased from the one or two drinks every other week. Their divorce was final in November 2005. As of March 2006, Applicant believed his alcohol abuse problem was of the past. He was drinking on average a six-pack of beer every seven to ten days because he enjoys the taste and finds it relaxing. He drank one beer and a half the night before his security clearance hearing while cooking dinner at his home. About one month before that, he consumed four to six beers while working around his yard on a Saturday. Applicant maintains, with no evidence to the contrary, that he has not been intoxicated since sometime in 2004 when he consumed six or seven beers at a campground with friends. He intends to continue to consume alcohol in the future despite concerns of his ex-spouse and mother that he is drinking too much.

Applicant's alcohol consumption has not affected his work performance at the fleet support center. The naval lieutenant in charge of the office where Applicant works as a contractor relies heavily on Applicant's technical expertise as he is one of only two individuals at the facility with the talent to repair sonar systems. He has no concerns about Applicant's trustworthiness or reliability, and has seen no evidence that Applicant has an alcohol 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:

Applicant began to drink alcohol with regularity while a young sailor in the U.S. military in 1984. With a transfer of duty station in October 1991, Applicant's drinking increased to where by October 1994 he was consuming 12 beers per day. Concerned that his spouse would leave him, Applicant voluntarily underwent inpatient Level III alcohol rehabilitation treatment for diagnosed alcohol dependency in 1994. He remained abstinent for about 16 months after his discharge, but by summer 1996 was again drinking between six and 12 beers daily. Ordered by his military command into treatment, Applicant completed a Level III substance abuse program in February 1997. He complied with aftercare plans for only about six months, when he stopped attending AA. By December 1997, he was again drinking beer on a daily basis despite being advised to abstain. Concerned he was drinking too much, he consciously cut back in August 2002 but was consuming three to four beers daily as of December 2003. He consumed alcohol to intoxication at least once in 2004. ⁽⁴⁾ As of his evaluation in December 2004, he reported ongoing consumption of one to two drinks per week. Since his marital separation in about May 2005, he has consumed on average a six-pack every seven to ten days. While there is no evidence of intoxication since 2004, he drinks up to six beers per occasion when working out in his yard. His ongoing consumption to as many as six beers in a sitting is considered abusive as it is against medical advice to abstain. Under Guideline G, disqualifying conditions ¶ 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*; 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*, apply in evaluating Applicant's suitability for continued access.

Applicant's current consumption on average of a six-pack every seven to ten days represents a positive change in his behavior from previous drinking patterns (*see* mitigating condition ¶ E2.A7.1.3.3.), but 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. The ameliorative impact of his alcohol rehabilitation treatment is undermined by his continued drinking against clinical advice. He is not involved in AA or a similar support network, as he decided in 1997 that he did not need it to control his drinking. Clearly, he does not satisfy the abstinence requirement.

Applicant has a favorable assessment from a military substance abuse counselor, who saw no indication of a recent alcohol problem as of December 2004 (*see* MC ¶ E2.A7.1.3.2. *The problem occurred a number of years ago and there is no indication of a recent problem*). Whether or not this qualifies as a favorable prognosis under ¶ E2.A7.1.3.4., the counselor's assessment suffers from its now dated nature and the fact that it was dependent on Applicant maintaining minimal use of one to two drinks approximately every two weeks. It is not at all clear that the counselor would give a similar prognosis for future alcohol related problems if he knew Applicant was drinking as many as six beers on a Saturday when working out in the yard.

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, ⁽⁵⁾ has the discretion to deviate from the literal terms of a pertinent adjudicative guideline where there is a rational basis to do so. ⁽⁶⁾ Applicant deserves credit for seeking counseling in 1994, and for not allowing his off-duty alcohol abuse to negatively effect his work with the defense contractor. Medical records of his inpatient hospitalization in February 1997 report Applicant arrived at treatment "understanding his alcohol dependence and knowing that he was an alcoholic." He also knew that abstinence was a goal of that treatment, and consistent with that goal, was advised to totally abstain, as well as to attend AA regularly on his discharge. Yet, he sees no problem with his current drinking even as his mother and ex-wife have expressed concerns and it is against therapeutic advice. He enjoys the taste of beer as well as apparently wine, and drinks while cooking himself dinner. Although he remains involved in his children's lives, there is no one at home on a daily basis to support 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., 1.f., 1.g. and 1.h. 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

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: 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. The records of Applicant's hospital admission via the emergency department do not corroborate a diagnosis of alcohol dependence. Diagnostic impression was depression although "ETOH" (short for ethanol, synonymous with alcohol) as well as suicidal were cited as reasons for using four point restraint. (Ex. 10)
3. It is clear from Applicant's response to interrogatories that the evaluator was a director/counselor of a nearby military base's alcohol rehabilitation program. Given his duty station, it is likely he was a certified navy counselor as Applicant indicated in his response to interrogatories (Ex. 3). However, those credentials are not clearly evident. The government's assertion that he was a supervisory clinical psychologist (Tr. 26) is not proven.
4. Applicant reported to the military counselor in December 2004 a heavy use of 12 drinks in May 2004 at a social gathering. (Ex. 6) At his hearing, he testified to drinking six to seven beers to intoxication when with friends around the start of fishing season, "April 2004, give or take." (Tr. 70-71) It is not clear whether this is an additional episode of abusive drinking.
5. *See, e.g.*, ISCR Case No. 99-0500 (App. Bd. May 19, 2000).
6. *See, e.g.*, ISCR Case No. 95-0912 (App. Bd. Feb. 27, 1997).