

DATE: June 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12509

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Thomas Albin, Esq.

SYNOPSIS

Applicant abused marijuana from 1980 to at least May 2002. His abstinence from illegal drugs since with no intent of future involvement is mitigating of the drug involvement concerns. He abused alcohol to as recently as February 2006 and was arrested for drunk driving in March 1984 and October 2000. Alcohol consumption concerns are not mitigated as he continues to consume alcohol at times to intoxication after receiving treatment for alcohol abuse and being advised by a physician to abstain from drinking. Clearance is denied.

STATEMENT OF THE CASE

On August 1, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons under Guideline H, drug involvement, and Guideline G, alcohol consumption, 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 August 10, 2005, Applicant answered the SOR and requested a hearing before a DOHA administrative judge. The case was assigned to me on December 28, 2005, and I convened a hearing on February 9, 2006, pursuant to notice of January 6, 2006. Fourteen government exhibits and one Applicant exhibit were admitted and testimony was taken from Applicant and his supervisor, as reflected in a transcript received February 17, 2006.

FINDINGS OF FACT

DOHA alleged under Guideline H that Applicant used marijuana with varying frequency, to include almost daily from about 1980 to at least May 2002, after he had been granted a confidential-level security clearance, he purchased marijuana, and he was arrested on possession of marijuana charges in November 1980, October 1988, and January 1993. Under Guideline G, DOHA alleged Applicant consumed alcohol at times to excess from approximately 1979 to at least February 2004, was arrested for drunk driving offenses in March 1984 and October 2000, received treatment from

February 1999 to at least March 2004 for his excessive use of alcohol, and continued to consume alcohol after being advised by a physician to abstain.

In his Answer, Applicant admitted the allegations, excepting that he had been ordered to complete 100 hours of community service for the 1993 felony marijuana possession offense. Applicant's admissions are accepted and incorporated as findings of fact. After a complete review of the evidence, I make the following additional findings:

Applicant is a 44-year-old pipe coverer (insulator) who has been employed by the same defense contractor since late March 1980. He held a secret-level security clearance from about September 1980 to 1987 when his clearance was administratively downgraded to confidential. Applicant seeks reinstatement of the secret clearance.

Drug Involvement

Applicant smoked marijuana on an almost daily basis from 1980 to May 2002. He found the drug relaxing and experienced no adverse side effects. He continued to use marijuana after he had been granted a secret clearance in late 1980, and after it was administratively downgraded to a confidential clearance in 1987. Despite knowing it was against company policy, he saw no problem with his drug involvement while in a sensitive position as he never smoked marijuana at work or reported to work "high." Applicant purchased the drug for his own use over the years at a cost of about \$25 per week, occasionally buying half ounce amounts for \$40 to \$50.

Applicant's marijuana involvement led to adverse legal consequences on three occasions. After consuming about six beers at a local Grange hall in November 1980, Applicant was relieving himself on the lawn outside when he was startled from behind by a police officer on routine patrol. Applicant struck the officer with a closed fist and was arrested for simple assault and possession of marijuana as the drug was found on him during a search incident to his arrest for assault. Applicant was fined \$50 on each count.

In October 1988, the police stopped Applicant on a complaint of individuals in a dark pickup truck throwing apples at windows as they passed. Applicant contends that he had been set up by a jealous communications dispatcher who liked a female Applicant was dating. The police detected the strong odor of burnt marijuana coming from Applicant's vehicle and found marijuana in the side pocket of his driver-side door. He was arrested for possession of marijuana (second offense), a felony. In December 1988, Applicant pleaded nolo contendere to misdemeanor marijuana possession, was adjudged guilty, and ordered to pay a \$200 fine and \$40 costs.

In January 1993, Applicant was arrested for smoking a marijuana joint outside of an inn. He was charged with possession of marijuana with prior conviction (third offense), a felony, but in March 1993 pleaded nolo contendere to possession of marijuana with prior conviction (second offense), and was sentenced to one year in an adult correctional institution, suspended, placed on one year probation, and fined \$640. He was also ordered to complete substance abuse counseling, and 100 hours community service. Applicant was not notified of any requirement to complete community service, and he was not sanctioned by the court for failure to perform the community service.

Applicant ceased his marijuana use in May 2002 for several reasons: family, job, health, financial, societal expectations, and its illegality. He does not intend to use marijuana in the future.

Alcohol Consumption

Applicant began drinking alcohol at age 18. With the exception of a ten-month period of abstinence in 1998, he has consumed alcohol daily for the most part. He was a six-pack-a-day drinker until 2005, when he decreased his consumption during the work week and on Sundays to a couple of beers per occasion. He continues to drink about six beers on Saturdays. Until 1992, he consumed a couple of beers during his lunch hour and returned to work on occasion. His alcohol use led to his arrest and treatment for alcohol abuse, as follows:

In mid-March 1984, while en route home from a friend's where he had consumed beer, Applicant was arrested for driving while intoxicated (DWI) with a blood alcohol content of .23%. In April 1984, he pleaded nolo contendere and was fined about \$300, ordered to complete 10 hours of community service and a 10-hour alcohol education class, and his driving privileges were suspended for 90 days.

After a few days of heavy drinking in late February 1999, Applicant went to the emergency room of a local hospital complaining of a possible seizure. He was examined and diagnosed as suffering from anxiety related to alcohol withdrawal. Applicant was placed on Ativan and released with a referral to his primary care physician for an alcohol evaluation.

Applicant followed up with his physician, who counseled him about his alcohol abuse in mid-March 1999. Claiming about four weeks of abstinence from alcohol, Applicant declined the recommendation of his physician that he attend AA. During a follow-up examination in mid-May 1999, Applicant indicated to the doctor that he had reduced his drinking to an occasional wine with his wife, but he would not be pinned down as to the quantity. In November 1999, Applicant reported drinking two beers per day.

In October 2000, Applicant drank ten beers while tailgating and during a professional football game. He was stopped for weaving en route home and was arrested for operating a motor vehicle negligently so to endanger, operating under the influence of liquor (OUI), failure to stay in marked lanes, and failure to stop for the police. He declined to submit to a breathalyzer, and his driver's license was suspended for 135 days. In December 2000, the operating to endanger charge was dismissed. The OUI was continued without a finding for one year and he was ordered to attend 40 hours of alcohol education, and pay fines of \$250. He was found responsible for the failure to stay in marked lanes, which was filed. The failure to stop for police was continued for six months without a finding.

As required by his sentence, Applicant was evaluated by a licensed mental health counselor on January 18, 2001, who opined he might suffer from alcohol abuse. She directed him to a driver alcohol education program, which he attended from mid-March 2001 to late June 2001 completing one evaluation, 16 group sessions, two Alcoholics Anonymous (AA) meetings, one victim's (MADD) forum. At discharge, his counselor determined no further recommendations for treatment were needed at that time, as Applicant was felt to have "benefited somewhat" from the program.

On August 12, 2002, Applicant executed a security clearance application (SF 86). He disclosed his drug and alcohol offenses as well as his use of marijuana "1 TIME A DAY" from March 1980 to May 2002. He listed his treatment at the hospital, consultation with a family practitioner in March 1999, and at the human services center from March 2001 to July 2001, in response to question 19 concerning his medical record. He responded "No" to question 30 ["In the last 7 years has your use of alcoholic beverages (such as liquor, beer, wine) resulted in any alcohol-related treatment or counseling (such as for alcohol abuse or alcoholism)?"].

In June 2003 and October 2003 office visits to his primary care physician to address medical issues, Applicant was advised to reduce his drinking. In November 2003, Applicant reported to the doctor that he was drinking six to eight beers per day but trying to reduce his consumption. The physician diagnosed Applicant as suffering from alcohol abuse by history, and again recommended AA, which Applicant declined. The physician again advised Applicant to reduce his drinking. A physician note of a follow-up visit in early March 2004 indicates in part, "Continues to drink--does not want to stop." Applicant was counseled by his primary care doctor of the need to discontinue alcohol consumption.

On February 24, 2004, Applicant was interviewed by a special agent of the Defense Security Service (DSS) about his substance abuse and related arrests. Applicant executed a sworn statement prepared by the agent from information Applicant provided in previous interviews. Applicant denied any abuse of illegal drugs since May 2002, and expressed regret about his involvement. He admitted he was still drinking a six-pack of beer per day, occasionally a little more, sometimes less. Applicant also acknowledged his use of alcohol was to excess but was careful to not drive when impaired.

Applicant and his spouse, whom he married in June 1997, began to have marital difficulties when he arrived home from a road job and found his stepdaughter's boyfriend living in the household. After he grabbed his spouse around the neck one night during a nightmare, she obtained a protective order against him and he moved out of the family residence in May 2005. Following a court appearance in June 2005 on a charge of attempted assault, he was ordered into counseling. He attended 16 of 18 counseling sessions between June 2005 and October 2005. On the counselor's recommendation, he also went to a few AA meetings in the summer. The counselor advised him to stop drinking.

Applicant consumed alcohol to intoxication in celebration of New Year's 2006 with his brother. Applicant did not

operate a vehicle as he went over to his brother's trailer within the same trailer park.

Applicant was treated by his primary care physician in January 2006. The doctor told him to abstain from alcohol; that if he drank, he should not consume more than two beers a day because of his blood pressure. As of February 2006, Applicant was consuming a couple of beers daily during the work week and on Sundays, and six beers on Saturdays. He drank five or six beers while watching the Super Bowl. He intends to continue to drink in his current pattern ("I don't really think a couple a day is really that bad." Tr. 71). Applicant drank a couple of cans of beer the night before his security clearance hearing. He does not consider himself an alcoholic.

Applicant's direct supervisor, who has known Applicant for the past 13 years, attested to the good quality of Applicant's work and his attendance. He has not seen Applicant impaired by alcohol or illegal drugs on the job and recommends him for a clearance.

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:

Drug Involvement. Improper or illegal involvement with drugs raise questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information. (¶ E2.A8.1.1.)

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 the Applicant, I conclude the following with respect to Guidelines H and G:

Willingness to abide by rules is an essential qualification for eligibility for access to the Nation's secrets. A history of disregard of laws, such as those proscribing illegal drug involvement, indicates an individual may fail to comply with the practices and procedures concerning the safeguarding of classified information. Applicant abused marijuana on a daily basis from about 1980 to May 2002, while he held a security clearance and knowing that illegal drug use was against his employer's policy. He purchased the drug on a regular basis for his personal consumption. Guideline H disqualifying conditions (DC) ¶ E2.A8.1.2.1. *Any drug abuse*, and ¶ E2.A8.1.2.2. *Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*, apply.

Applicant submits in mitigation that he ceased his marijuana use in May 2002, and intends no future use. From the evidence of record, Applicant would have the government believe that while several factors led him to stop using marijuana (societal, legal, family, health), he simply stopped using marijuana one day in May 2002 after 22 years of almost daily abuse. There is no precipitating factor evident in the record for this claimed cessation, and previous drug possession convictions did not lead him to stop in the past. Yet, the government presented no evidence of any illegal drug use by Applicant since May 2002. The absence of any recent involvement, and Applicant's record of candor with the government about his marijuana abuse, weigh heavily in my accepting that he has grown out of marijuana and is not likely to smoke it again. Applicant's involvement with marijuana while he held a clearance is not condoned, but to his credit, he now regrets that behavior. Mitigating conditions (MC) ¶ E2.A8.1.3.1. *The drug involvement was not recent*, and ¶ E2.A8.1.3.3. *A demonstrated intent not to abuse any drugs in the future*, apply. SOR ¶¶ 1.a., 1.b., 1.c., 1.d., 1.e., and 1.f., are resolved in his favor.

However, Applicant has not made a similar change with respect to his drinking behavior. Applicant began drinking alcohol at age 18. With the exception of a ten-month period of abstinence in 1998, he has consumed alcohol daily for the most part. Symptoms of alcohol withdrawal led him to seek emergency medical treatment at a local hospital in 1999, and in October 2000, he committed his second drunk driving offense. Despite being repeatedly advised to abstain from alcohol by his primary physician, he continued to consume a six-pack a day until 2005, when he decreased his consumption to a couple of beers per day during the work week. As of February 2006, he was still drinking beer daily, usually about six beers on Saturdays. Under Guideline G, DC ¶ 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*, applies because of his March 1984 DWI and October 2000 OUI offenses. Progress notes of his sessions with his primary physician confirm the doctor diagnosed him as suffering from alcohol abuse, so DC ¶ E2.A7.1.2.3. *Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*, is also pertinent. DC ¶ E2.A7.1.2.5. *Habitual or binge consumption of alcohol to the point of impaired judgment*, applies at least to his drinking on the occasions of his drunk driving.

Applicant submits as mitigating the decrease in quantity consumed to no more than two beers per occasion during the work week and on Sundays. While this is a positive change in his behavior in support of sobriety (see MC ¶ E2.A7.1.3.3.), his drinking is still considered abusive as it is against medical advice to abstain. He regularly consumes six beers on Saturdays and admits he was intoxicated as recently as New Year's 2006. Moreover, the diagnosis of alcohol abuse justifies applying the requirements set forth in MC ¶ E2.A7.1.3.4. of the Directive: the individual must successfully complete inpatient or outpatient rehabilitation along with aftercare requirements, participate frequently in meetings of AA or similar organization, abstain from alcohol for at least 12 months, and receive a favorable prognosis from a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program. Applicant's physician recommended to Applicant in March 1999 and again in November 2003 that he attend AA. Applicant did not do so. Following his arrest in May 2005 on unalleged assault charges, he went to a few AA meetings in the summer, but has not continued with them. He continues to drink alcohol against medical advice, including to intoxication in celebration of New Year's 2006. Applicant's failure to satisfy MC ¶ E2.A7.1.3.4. does not mandate an adverse outcome, but it is not clear that he understands the seriousness of his alcohol problem. The absence of any work-related impairment does not negate the security significance posed by off-duty abusive drinking, as the protection of classified information is a 24-hour-per-day responsibility. His ongoing alcohol abuse presents a significant security risk. SOR ¶¶ 2.a., 2.b., 2.c., 2.d., 2.e., and 2.f. are concluded against 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 H: 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

Subparagraph 1.f.: For the Applicant

Paragraph 2. Guideline G: AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Subparagraph 2.d.: Against the Applicant

Subparagraph 2.e.: Against the Applicant

Subparagraph 2.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.