DATE: July 12, 2006

In re:

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

Applicant for Security Clearance

CR Case No. 05-02406

DECISION OF ADMINISTRATIVE JUDGE

MARC E. CURRY

APPEARANCES

FOR GOVERNMENT

Melvin Howry, Esq., Department Counsel

FOR APPLICANT

Laura J. Anderson, Esq.

SYNOPSIS

Applicant drank alcohol excessively from approximately 1982 to 2002. Despite a doctor's diagnosis of alcoholism in 2002, and a counselor's recommendation that he abstain from drinking in June 2005, he continued to drink through March 2006. Although his enrollment in a treatment program three weeks before the hearing constitutes a step in the right direction, it is insufficient to alleviate the security concern in light of the scope of the problem and his previous relapse. Clearance is denied.

STATEMENT OF THE CASE

On October 12, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was unable to find that it was clearly consistent with the national interest to grant or continue a security clearance. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive). The SOR alleges a security concern under Guideline G for alcohol consumption. Applicant answered the SOR on November 10, 2005, and requested a hearing.

The case was assigned to me on December 7, 2005. DOHA issued a notice of hearing on March 23, 2006, scheduling the hearing for April 12, 2006. I conducted the hearing as scheduled, and received four government exhibits, five Applicant exhibits, and the testimony of three Applicant witnesses. At the close of the hearing, I granted Applicant's counsel's motion to leave the record open to submit written closing argument. Applicant's counsel submitted it on May 30, 2005. Department Counsel did not reply. DOHA received the transcript (Tr.) on April 21, 2006.

FINDINGS OF FACT

Applicant admits all of the SOR allegations except subparagraph 1.a. I have incorporated these admissions into the findings of fact.

Applicant is a 47-year-old married man with two adult children. He graduated from college in 1985 with a degree in electrical engineering, and has been working for the same employer since that time. He is one of his company's top engineers.

Applicant has been drinking alcohol excessively since 1982. (Exhibit 3, Hospital Records, dated March 21, 2002, at 23.) By 2002, he was consuming approximately a pint of liquor per day during the week, and a fifth of liquor per day on weekends. (*Id.* at 17.) During this time, he would drink alcohol continuously from 3:00 p.m. when he returned home from work to 9:00 p.m., when he went to bed. (*Id.*) Although his alcohol abuse never resulted in any arrests, it caused him to wreck one of his cars and sometimes caused him to miss work. (*Id.* at 87.)

On March 13, 2002, Applicant voluntarily entered an inpatient alcohol treatment program where a doctor examined him and diagnosed him with "alcohol addiction with withdrawal syndrome." (*Id.* at 17.) On March 21, 2002, the doctor discharged him from the hospital. Applicant then enrolled in an intensive outpatient treatment program on March 25, 2002, consisting of both individual and group counseling. (*Id.* at 5-6.) Applicant actively participated in the counseling sessions, but did not enroll in Alcoholic's Anonymous (AA), as the program required. On April 1, 2002, his case manager warned him that he would be expelled from the program if he did not enroll in AA. (*Id.* at 6.) On April 15, 2002, Applicant chose to quit the program rather than enroll in AA, prompting his case manager to characterize his prognosis for long-term recovery as poor. (*Id.* at 5-6.)

In approximately August 2002, Applicant began drinking alcohol again. (Tr. at 100.) On average, he consumed an occasional drink with dinner during the week, and up to a six-pack of beer on weekends. (Exhibit 2, Applicant's Statement, dated June 9, 2004, at 2; Tr. at 101.) His disclosure of this information to a Defense Security Services (DSS) agent during a background investigation prompted DOHA to request an alcohol evaluation.

On June 9, 2005, Applicant, pursuant to DOHA's request, returned to the facility that treated him in 2002. A case manager evaluated him and concluded that "although [Applicant] reports having controlled his drinking since 2002, he is at high risk to lose control in the future if he continues to drink." (Evaluation letter of Applicant's case manager, dated June 14, 2005, as included in Exhibit 4, Response to Interrogatories, dated June 22, 2005, at 4.) Also, the case manager recommended he attend intensive outpatient treatment for eight weeks followed by relapse prevention counseling for 15 weeks, along with AA sessions.

Applicant continued to drink sporadically after the case manager's June 2005 recommendation that he attend outpatient treatment. By December 2005, he was drinking to excess. (Tr. at 78.) This prompted him to go to another treatment facility in January 2006 to "get something to minimize the effects the alcohol had made on [his] body." (*Id.*) At that time, he began receiving treatment from a doctor specializing in family medicine, who diagnosed him with "generalized anxiety disorder," and alcohol abuse. (Exhibit B, Diagnosis, dated March 21, 2006; Tr. at 57.) Per the doctor, Applicant was self-medicating by using alcohol to minimize his anxiety. (Exhibit B.) He recommended Applicant treat the anxiety disorder before focusing on the alcohol problem. (Tr. at 59.)

For the next two months, the doctor treated the anxiety disorder, monitoring several medications he had prescribed. After the anxiety disorder resolved, Applicant enrolled on March 23, 2006 in the alcohol treatment program that the case manager had recommended in June 2005. (Tr. at 65.) He was enrolled in the treatment program as of the date of the hearing. (Exhibit A, Letter from Case anager, dated March 22, 2006.) He has been abstinent from alcohol since March 10, 2006. (Tr. at 80.)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into disqualifying conditions (DC) that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information and mitigating conditions (MC) that may be considered in deciding whether to grant an individual's eligibility for access to classified information.

An administrative judge need not view the adjudicative guidelines as inflexible rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied along with the factors set forth in the Adjudicative

Process provision in Section E2.2, Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching impartial, common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. (Directive ¶ E2.2.1.)

The relevant guideline to be applied here is Guideline G (Alcohol Consumption). Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the conclusions below.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is"clearly consistent with the national interest." (*See* Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.) In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on speculation or conjecture.

The government is responsible for presenting witnesses and other evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Applicant's loyalty is not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

Having considered the record evidence in light of the appropriate legal precepts and factors, I conclude the following.

Under Guideline G, "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." (Directive, ¶ E2.A7.1.1.) Here, Applicant drank alcohol excessively for 20 years, and was diagnosed with alcoholism in 2002 and alcohol abuse in 2005 by credentialed medical professionals. During the period immediately preceding his 2002 diagnosis, he was consuming up to a fifth of liquor per day. DC 3, "diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or dependence," (Directive, ¶ E2.A7.1.2.3), and DC 5, "habitual or binge consumption of alcohol to the point of impaired judgment," (Directive, ¶ E2.A7.1.2.5), apply.

Applicant's use of alcohol gradually diminished in 2006. By mid-March, he had abstained entirely. He is taking medication to control his anxiety that in the past had sometimes exacerbated his urge to drink alcohol. MC 3, "positive changes in behavior supportive of sobriety," (Directive, ¶ E2.A7.1.3.3), applies.

Under the whole person concept, Applicant's current sobriety, and his participation in alcohol treatment significantly offset the negative security implications generated by the nature, extent, and seriousness of his past alcohol abuse. However, he has relapsed in the past, has not yet completed the treatment program, and has only been abstinent from alcohol for four months. Having balanced all of the record evidence, the risk of recurrence is still unacceptably high. Therefore, I conclude that Applicant has not mitigated the Guideline G security concerns.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

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

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.

Marc E. Curry

Administrative Judge