

DATE: October 24, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 05-11044

## **DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

#### **FOR APPLICANT**

Thomas Albin, Esq.

### **SYNOPSIS**

Applicant has a history of abusing alcohol from the 1970s to December 31, 2005. While he has forsworn any future involvement with alcohol because of the serious risks it poses to his health, it is too soon to conclude that his alcohol abuse is safely in the past. Clearance is denied.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1960), as amended, DOHA issued a Statement of Reasons (SOR) on December 7, 2005, detailing the basis for its decision—security concerns raised under Guideline G (Alcohol Consumption) of the Directive. Applicant answered the SOR on December 28, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me on January 23, 2006. With the consent of the parties, I convened a hearing on May 17, 2006, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Five government exhibits were admitted, with an additional exhibit, proposed Exhibit 2, withdrawn by the government. Applicant submitted two exhibits and testified on his behalf, as reflected in a transcript (Tr.) received by DOHA on May 30, 2006.

### **FINDINGS OF FACT**

In the SOR, Applicant was alleged to have consumed alcohol, at times to excess and intoxication, from about 1968 to at least May 2005; been convicted of possession of cocaine after being arrested for driving while intoxicated in July 1988; sought alcohol counseling in November 1988; been convicted of an April 1996 DWI; attended court-ordered counseling with the same licensed professional counselor (LPC) from April 1996 through June 1996, July 1996 to July 1997, and October 1999 to mid-December 1999; and received treatment for alcohol dependence from April 17, 2003, to May 16, 2003, with aftercare counseling with the LPC to September 2003. Applicant admitted the allegations, which, with some exception detailed below, are incorporated herein by reference. After a complete review of the evidence, I make the following additional findings of fact:

Applicant is a 54-year-old second class nuclear test technician (electronics) who has been employed by a defense contractor since September 1973. Applicant was a first class electrician in the electrical department until about 2005. He has held a secret-level security clearance since September 1975.

Applicant has a history of abusive alcohol consumption to December 31, 2005, that led to drunk driving offenses, one five-day suspension from work, and arrests following physical altercations with a former girlfriend. He continued to consume alcohol daily for long periods despite completing inpatient alcohol rehabilitation, participating in counseling with a licensed alcohol counselor, and suffering from a serious medical condition exacerbated by drinking. The salient details of his drinking history follow.

Applicant drank beer at age 16 when it was available. His consumption of beer increased and he began to consume liquor as the years passed. Sometimes in the 1970s, he was suspended from work for five days without pay after he showed up for duty intoxicated. Over the next decade, he worked second shift. There were a few more occasions where he reported for work smelling of alcohol and was tested at the yard hospital but allowed to remain at work as he was not intoxicated.

In May 1981, Applicant and his girlfriend at the time had a daughter. He continued to consume alcohol at home and at bars. In about February 1988, with a strike looming at work, Applicant's girlfriend told him that she would be leaving him when the lease ended on their residence that June. A few weeks after they had parted, she decided she wanted nothing further to do with her daughter as well, and Applicant was left to raise his daughter on his own. Applicant had a good relationship with his daughter, even after alcohol became a problem for him.

In July 1988, he was arrested for driving while intoxicated (DWI), possession of cocaine and possession of drug paraphernalia. Twenty days later, he was convicted of cocaine possession and sentenced to two years probation. The DWI charge was dismissed and the paraphernalia charge was nolle prosequi.

Aware that alcohol was becoming a problem, Applicant voluntarily admitted himself to an alcohol rehabilitation program in November 1988. He attended Alcoholics Anonymous (AA) for a while and was abstinent for about two years after his discharge, but relapsed into abusive drinking. After consuming a couple of drinks at a bar one night in January 1992, Applicant was arrested for DWI when he drove too closely around a patrol car that had stopped on the road. He failed field sobriety tests and a breathalyzer, and was sentenced in February 1992 to six months, all but two days suspended, placed on probation, and ordered into counseling. Applicant does not now recall where he received the counseling. He also went back to AA, but did not stay with it.

In April 1996, Applicant left a bar with an open container of beer in his vehicle. When he bent down to pick it up after it had tipped over, he rear-ended another vehicle. He was arrested for DWI, second offense, after he failed field sobriety tests. Twelve days later, he began counseling with a licensed professional counselor (LPC). In late May 1996, he was sentenced to six months in jail, execution suspended with ten days to serve, to two years probation, and to continue with his counseling. Applicant attended individual sessions with the LPC until June 30, 1996.

On a few occasions in the 1990s, Applicant was arrested following physical altercations with his girlfriend at the time. He had been drinking on those occasions. There is no record of any convictions following these incidents. The Federal Bureau of Investigation (Ex. 4) reports an arrest in July 1994 for disorderly conduct and assault-third degree, but no disposition. Applicant attended court-ordered substance abuse counseling with the LPC from July 1996 to July 1997 and from October 5, 1999 to December 14, 1999, although it is not clear in the record what led the court to order the counseling. [\(1\)](#)

As of 2003, Applicant was living out of a hotel room while on temporary duty for his employer. He drank six or eight beers plus shots every night. After his daughter called him long distance and informed him that she was pregnant, he had himself admitted on April 17, 2003, to the alcohol rehabilitation facility he had attended in November 1988. After completing a 30-day inpatient program on ay 16, 2003, he attended the recommended five AA meetings weekly for not quite three months. The frequency of his contact with AA declined further over time to where it stopped completely by September 2003.

Applicant received aftercare counseling from the LPC from May 30, 2003, to September 2003, initially every week and then every other week. The LPC diagnosed him as suffering from alcohol dependent. Applicant admitted to her that he had resumed drinking.

To update his secret clearance, Applicant executed a security clearance application (SF 86) on January 28, 2005. He listed his 1988 possession of narcotics conviction, his 1996 DWI, and his alcohol rehabilitation treatment and aftercare counseling in 2003. He added under general remarks (question 43) that his disclosure of his prior arrests was incomplete as he was unable to recall the dates, charges, or dispositions of offenses omitted.

During a hospital admission in May 2005, Applicant was informed that he had hepatitis C. Advised by his physician that alcohol had affected his liver, Applicant reduced his consumption of alcohol to two to three beers per sitting, nearly every day. On May 19, 2005, Applicant was interviewed by a special investigator for the Office of Personnel Management Investigations Service about his drinking history and alcohol-related arrests. Applicant admitted he had a history of daily drinking over the years, at least four to six beers per day and frequently to intoxication, but that he had reduced his intake to "2-3 beers nearly every day." He acknowledged drinking three or four beers once per month, which was now enough for him to become intoxicated. He denied alcohol had any impact on his ability to hold a confidence, but acknowledged a negative impact on judgment ("poor decisions"). He indicated he was in the process of reducing the amount and frequency of his consumption.

In June 2005, Applicant's daughter broke up with her fiancé. She and her daughter, who was born in March 2004, moved in with Applicant and his girlfriend. Sometime that month, Applicant's daughter observed Applicant to be in a condition where she thought he had consumed too much alcohol.

In September 2005, Applicant sought consultation with a specialist for treatment of his hepatitis C. He was informed that alcohol accelerated the effect of hepatitis on his liver, and that if he didn't stop drinking, he wouldn't live very long. (Tr. 57) The physician proposed treating the hepatitis with expensive Interferon medication costing \$36,000 for 48 weeks, but Applicant would have to be sober for six months before the doctor would consider the Interferon treatment. Applicant declined an offer of Klonopin medication to help with the symptoms of alcohol withdrawal because of the possible adverse effects on his balance that would require him to take a leave of absence from work. Over the September 2005 to December 2005 time frame, Applicant suffered from delirium tremens as he attempted to wean himself gradually off alcohol so that he could start the Interferon treatments, although the severity of the tremors lessened over time.

On December 31, 2005, Applicant drank five or six beers plus four or five shots of tequila at his residence. As midnight approached, Applicant thought about the promise to himself that he would be done with his alcohol by the end of the year, and he dumped his remaining supply of alcohol down the sink. He has not consumed any alcohol since, but has had thoughts of drinking after a bad day at work and just before his security clearance hearing. Applicant does not intend to drink alcohol in the future because he understands it would accelerate the hepatitis damage fourfold. He feels "fairly confident" that he will maintain sobriety.

As of May 2006, Applicant was supporting his daughter and granddaughter financially. During the approximately 16 hours per week that his daughter was employed outside the home in the retail sector, Applicant watched his granddaughter. Applicant's daughter has not seen Applicant consume any alcohol since October 2005.

Applicant has not attended AA since 2003 and is not involved in any similar support organization. He feels he does not need the meetings as they didn't stop him from drinking in the past and he was making an effort to avoid those situations and activities, such as going out to bars, that led him to drink in the past.

Applicant's supervisor has seen an improvement in Applicant's behavior in the past two years. Applicant has been more helpful, positive, and responsive to instruction. He is always on time and can be counted on to work late if needed. In his opinion, Applicant has made "vast improvements" in his personal and professional life to where he is "a highly valued and respected coworker."

## 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 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). Each security clearance decision "must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy." Directive ¶ 6.3. 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 (App. Bd. Dec. 19, 2002).

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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

## CONCLUSIONS

### **Guideline G--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. Applicant has had a serious problem with drinking since the 1970s. It has caused alcohol-related problems at work (five-day suspension) and at home (repeated drunk driving, arrests for assault).

The alcohol-related incidents raise Guideline G disqualifying conditions ¶ 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*, and ¶ 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*. Although the government did not allege Applicant's suspension from work or his arrests for physical assault, the information can properly be considered in determining whether a particular adjudicative guideline condition is applicable. (2) As to whether there is a qualifying diagnosis of alcohol dependency to warrant consideration of ¶ E2.A7.1.2.3. *Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*, or ¶ 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*, Applicant admitted in his answer that his inpatient treatment in 2003 was for alcohol dependency. However, at his hearing he testified he did not recall if he was told by medical personnel that he was alcohol dependent ("They may have told me, but it was quite a while ago." Tr. 78-79) When asked whether the specialist he consulted in September 2005 told him he was alcohol dependent, Applicant responded, "I don't know if he used those exact words or not" (Tr. 82). Applicant affirmed he was diagnosed as alcohol dependent by the LPC who counseled him from 1996-1997, in 1999, and again in 2003. There is no evidence that she is an LCSW or on staff of a recognized treatment program, which is required for ¶ E2.A7.1.2.4, although her counseling was accepted by the local court. The government presented no documentation that would confirm a diagnosis of dependency by a credentialed medical professional or LCSW.

However, Applicant's chronic excessive drinking of alcoholic beverages warrants consideration of DC ¶ E2.A7.1.2.5. *Habitual or binge consumption of alcohol to the point of impaired judgment*. He had a habit of drinking at least four to six beers per day. When on temporary duty for his employer in 2003, the quantity was six to eight beers plus shots every night. By May 2005, he had reduced the quantity to two or three beers per day, but his tolerance for alcohol had decreased. While it used to take six to eight beers, only three or four beers were enough for him to become intoxicated, and he drank in that amount once a month. Evidence of physiological dependence on alcohol is found in the symptoms of withdrawal (delirium tremens) suffered in his efforts to reduce the frequency and amount of his consumption. His consumption of five or six beers plus five or six shots of tequila on December 31, 2005, is a recent episode of binge

drinking. [\(3\)](#)

Of the Guideline G mitigating conditions only ¶ E2.A7.1.3.3. *Positive changes in behavior supportive of sobriety*, is potentially applicable. Applicant's claim of total abstinence from alcohol since December 31, 2005, is accepted despite corroboration being limited to his daughter's testimony that she has not seen him drink any alcohol since October 2005, and his supervisor's general observations as to the improvements in Applicant's personality and sociability on the job. Given Applicant's favorable credibility and the fact that continued drinking would likely hasten his death, I do not doubt the sincerity of his intent to abstain completely from alcohol. Yet, Applicant's prospects for sustained abstinence must be evaluated in light of his drinking history, which includes his excessive consumption on December 31, 2005, when he knew that alcohol would accelerate the adverse effects on his liver and when he knew that his drinking could cost him his clearance. His recent abstention is too short to provide adequate assurances against a relapse, especially where he is not involved in any ongoing counseling or affiliation with an organization like AA that could assist him in maintaining his sobriety.

### **Whole Person Analysis**

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive E2.2.1. "Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination." Id. In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive ¶ E2.2.1. Applicant is credited with the improvements in his work and attitudes over the past two years, and he has been a good father. There is no evidence he has engaged in drunk driving or been involved in any other alcohol-related criminal incidents in the last ten years. These positive changes in his behavior and employment reflect some rehabilitation (¶ E2.2.1.6. *The presence or absence of rehabilitation and other pertinent behavioral changes*), but it is not enough to overcome his years of abusive drinking (¶ E2.2.1.1. *The nature, extent, and seriousness of the conduct*).

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

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

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

### **DECISION**

In light of all of the circumstances 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. Applicant testified he was arrested "a few times," for alcohol-related physical assaults on a former girlfriend before 1995. (Tr. 86) The 1996/97 counseling could have been ordered by probation following the April 1996 DWI. It is not at all clear what prompted the court to order the group counseling in 1999. The government presented no documents of his treatment sessions.
2. See ISCR Case No. 94-1159 (App. Bd. Dec. 4, 1995). While uncharged conduct cannot be the basis for an adverse decision, it is relevant to deciding whether a particular policy factor applies.
3. The Directive does not define binge drinking. The quantity consumed by Applicant on December 31, 2005, would be defined as binge drinking by the U.S. Department of Health and Human Services Substance Abuse & Mental Health Services Administration (SAMHSA), to wit: five or more drinks on the same occasion at least once in the past 30 days.