

DATE: January 27, 1997

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In re:

SSN:

Applicant for Security Clearance

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ISCR OSD Case No. 96-0371

## **DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

### **APPEARANCES**

#### **FOR THE GOVERNMENT**

Barry M. Sax, Esq.

Department Counsel

#### **FOR THE APPLICANT**

Robert J. Fiore, Esq.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) dated July 15, 1996, 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 and recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked.

A copy of the SOR is attached to this Decision and included herein by reference.

On August 5, 1996, Applicant, acting *pro se*, responded to the allegations set forth in the SOR and requested a hearing. The case was assigned to Administrative Judge Robert R. Gales on August 26, 1996, and transferred to the undersigned on September 17, 1996, due to workload considerations. Accordingly, on September 23, 1996, this Administrative Judge scheduled a hearing for October 16, 1996. On September 25, 1996, Robert J. Fiore, Esq. advised the undersigned that he expected to be retained by Applicant and he requested that the matter be rescheduled. On September 30, 1996, continuance was denied due to the overseas location of the hearing and the inconvenience which would be caused to a Government witness.

On October 7, 1996, the parties stipulated to the admission and pre-hearing consideration of sixteen Government exhibits. Four Applicant Exhibits were also submitted into the record on that date, Department Counsel having no objection to their admission.<sup>(1)</sup> At the hearing, held as scheduled on October 16, 1996, six additional Government exhibits (Exhibits 7, 8, 10, 11, 12, 14) and four additional Applicant exhibits (Exhibits E, F, G, H) were admitted. Testimony was taken from two Government witnesses and from the Applicant. The record was ordered held open following the hearing to allow for Applicant's submission of an assessment from his treating psychiatrist. The document

was timely submitted via facsimile on October 24, 1996. The Government having no objection to its admission, the document was marked and entered into the record as Applicant Exhibit I.<sup>(2)</sup> A transcript of the hearing was received by this office on November 26, 1996.<sup>(3)</sup>

## **FINDINGS OF FACT**

After a thorough review of the evidence in the record, and upon due consideration of same, this Administrative Judge renders the following findings of fact:

Applicant is a 52 year old United States citizen who since February 1987 has been in the direct employ of an international organization of which the United States is a member. Applicant seeks revalidation of his Secret security clearance.

Applicant began drinking beer at about age fifteen (circa 1959) when was still in high school. After entering active duty in the military on March 9, 1965, he was given a Secret security clearance. His consumption levels increased significantly to where he began to have physical reactions from drinking. Over the next five years, he consumed alcohol heavily. Stationed overseas in country A from 1970 to 1972, Applicant drank "a lot" of beer. On his return to the States in 1972, Applicant was assigned to a flight squadron where he performed aircraft maintenance. Over the next two years, his drinking decreased significantly as he was required to abstain for twelve hours prior to a flight. In 1974, he left the flight squadron for a significantly less stressful environment and job. While he did a bit of beer drinking, he spent a lot of time skiing.

In 1977, he was transferred to a high pressure radar development program. His alcohol consumption increased to where he experienced alcohol-related blackouts and legal difficulties. On April 30, 1977, he was arrested for driving under the influence (DUI) and improper lane change. He forfeited \$35.00 bond on the DUI charge and \$20.00 bond for improper lane change.

In 1978, he was sent to a foreign country where he was put in charge of opening a radar development program similar to what he had been working on in the States. He reacted to the increased stress by drinking in excess of five beers per day. Circa the 1980/81 time frame, he returned to country A to work on the radar program there. His security clearance was upgraded to Top Secret in October 1980. While he did a lot of drinking at first, it did not affect his actions until he and his spouse began to experience marital difficulties, related at least in part to a house his spouse had sold back in the States. In about March 1982, his spouse asked him for a divorce and she moved back to the States. The tensions caused by the pending divorce caused him to drink daily after work and on weekends, in quantities of up to a liter of whiskey per occasion. He began to experience blackouts and alcohol-related tremors, and to experience problems at work. On August 16, 1982, he was seen at the base mental health clinic to determine his current status. Applicant appeared intoxicated at the time. At the squadron's request, Applicant was interviewed at the mental health clinic on August 17, 1982, and diagnosed as suffering from alcohol abuse, continuous. It was recommended that he be placed in phase IV of the outpatient alcohol rehabilitation program with the possibility of inpatient alcohol treatment. During a phase IV treatment session on September 1, 1982, Applicant reported he was in control of his alcohol. Per the command, Applicant was placed in weekly phase IV meetings at the mental health clinic on September 10, 1982. He continued to drink and on October 29, 1982, it was recommended that he enter an inpatient rehabilitation program offered at a United States military hospital (treatment facility B).

Applicant was admitted to the alcohol rehabilitation program at treatment facility B on November 3, 1982. Applicant underwent detoxification with Librium to control moderate shakes until November 7, 1982, when he was transferred to the alcohol treatment unit. Initially passive in group therapy sessions, he actively participated in the program, to include Alcoholics Anonymous (AA) and stress management training. During his treatment, Applicant came to realize for the first time that he had a problem with alcohol. Having made substantial progress, he was discharged on December 3, 1982, with a diagnosis of alcohol dependence, characterized by pathological use of alcohol, loss of control, shakes, blackouts and moderate depression. His prognosis for long-term recovery from alcoholism was assessed as fair, provided he continued active, long-term involvement in AA, resolved his marital difficulties, and looked to himself for support rather than to alcohol and avoidance. Applicant was returned to active duty without restrictions, to be followed by his local base social actions rehabilitation committee. Applicant was advised to abstain completely from alcohol and

to begin an active, consistent long-term involvement with AA and AA-related activities.

Applicant remained abstinent for about a year following his discharge from treatment facility B when he resumed drinking gradually, having a few drinks on an occasional basis. Once back in the States during the 1984/85 time frame, Applicant and his spouse were divorced after twelve years of marriage and he learned his then girlfriend was pregnant. He dealt with his divorce and the pregnancy by drinking heavily. On July 31, 1985, Applicant retired from the service at the rank of staff sergeant.

Applicant spent the next year and a half residing in country C with his common law wife and raising their daughter.

In February 1987, Applicant started working in country A as a civilian radar technician with his present employer. As a condition of his continued employment, Applicant was required to have an initial and thereafter annual physical examinations. The initial physical was performed by Dr. D, a physician and lieutenant colonel in country A's military, who since December 1983 has served as the base's occupational health and public health officer. The physician detected no elevation in liver enzymes which might indicate an alcohol problem and Applicant was certified fit for duty as an aircraft radar maintenance technician. In that capacity, Applicant required a security clearance for access to restricted areas and to classified tapes.

In addition to his occupational health responsibilities, Dr. D had a contract with the international organization to treat its civilian employees on a private basis. Circa December 1988, Applicant began to have problems with his common law spouse. He started drinking at the rate of about a liter of whiskey per week. Aware he was drinking more than he should have, Applicant turned to Dr. D for help and continued in outpatient counseling with Dr. D until about April 1989. Sometime in the spring of 1989, Applicant was convinced by his common law wife to build a residence in neighboring foreign country C. Against his better judgment, they started putting a lot of money into the home. Applicant made an effort to find a job in country C. On or about the day they were scheduled to move into the home, his common law wife told him she wanted to terminate their relationship. Applicant coped by consuming just about everything he had in his house (whiskey, scotch, bourbon) in quantity of a liter per day. Applicant missed several days of work. After drinking continuously over the course of a weekend in September 1989, Applicant called in to his shift leader on the Monday morning and reported that he would not be coming in to work because he was intoxicated. Applicant asked this co-worker to contact Dr. D to arrange admission for him to a local hospital. With Dr. D's assistance, Applicant received detoxification treatment at a local hospital (treatment facility E) for two weeks in September 1989. On Dr. D's recommendation, an inpatient setting was sought for Applicant where treatment would be in his native tongue. Unable to be enrolled in treatment facility B at the United States military hospital for three months, Applicant was not permitted to return to work until he had successfully completed the inpatient program. While awaiting his admission to treatment facility B's inpatient program, Applicant received outpatient counseling at a local substance abuse clinic. He continued to drink alcohol at the rate of an occasional beer.

Applicant presented for evaluation at treatment facility B on November 10, 1989. He reported a significant alcohol use history with clear indications of loss of control, inappropriate quantity and frequency of consumption, impaired neurological functioning evidenced by seizures in 1985, and episodic blackouts. He was diagnosed as suffering from alcohol dependence, in brief remission, less than six months, with evidence of middle to chronic stage alcoholism. It was recommended to Applicant that he enter the residential alcohol treatment program, with admission tentatively scheduled for December 28, 1989, abstain from mood-altering chemicals, participate in AA and a base aftercare program. Applicant entered treatment facility B on December 28, 1989, as scheduled and remained an inpatient until January 31, 1990. Advised by medical personnel that he should not drink, Applicant at the time of his discharge from treatment facility B was convinced that he had no control over drinking. On completion of the program, Applicant was permitted to return to his work as an aircraft radar mechanic without restrictions. Applicant attended follow-up aftercare through his base's mental health services clinic until May 20, 1991. No indications of ongoing alcohol abuse were noted and he was given a diagnosis of alcohol dependence, in full remission.

After abstaining completely for about a year to a year and a half following his completion of inpatient rehabilitation, Applicant resumed drinking an occasional beer. In 1994, Applicant suffered personal loss in the deaths of both his brother and a close cousin. He began to drink excessively at home. Concerned, Applicant's neighbor contacted Applicant's shift leader who in turn contacted Dr. D. Dr. D arranged for an ambulance and Applicant's admission to a

local hospital in country A (treatment facility F) where he underwent detoxification from August 23, 1994 and September 5, 1994.

Both the squadron commander [Lieutenant Colonel (LTC) G] and the chief civilian personnel officer (Mr. H) were made aware of Applicant's alcohol problem. Dr. D insisted he would no longer accept outpatient treatment or AA.<sup>(4)</sup> Efforts were made to find an inpatient "cure" (alcohol rehabilitation) where language would not be a problem. Following his discharge from the hospital, Applicant on or about September 29, 1994, met with Dr. D, LTC G and Mr. H in Dr. D's office. Initially reluctant to follow their recommendation that he undergo an inpatient "cure," Applicant agreed once he learned that his continued employment was contingent on him entering such a program. Advised by Dr. D on that occasion that he should abstain from drinking, Applicant denied any consumption, but admitted buying beer for friends. It was decided that until an alcohol rehabilitation program became available, Applicant would be allowed to remain in the radar shop with a restriction that he work only days, no shift work and no work on the aircraft, and that he work only under close supervision. Applicant concurred and promised that he would abstain from alcohol. During their discussion, Applicant was made aware verbally that his employment contract would be immediately terminated should he report to the base under the influence of alcohol or drink on duty.

While awaiting admission into an inpatient program, Applicant met with Dr. D who recommended that Applicant pursue outpatient counseling during that period with an alcohol counselor (Mrs. I) at a local clinic.<sup>(5)</sup> Mrs. I referred Applicant to a local country A substance abuse program. Dr. D expressed his reservations about a program which was not in English, but with a United States military treatment facility unavailable, Applicant agreed to try the program for a week. On January 4, 1995, Applicant was admitted on an inpatient basis to the substance abuse rehabilitation center (treatment facility J). Applicant had no problem for the first three to four weeks of the program as his roommate spoke fluent English. After his roommate left the program, Applicant had difficulty with the group therapy sessions which were conducted entirely in the language of company A.<sup>(6)</sup> Applicant remained in the program, translating his notes in the evenings, and was discharged on March 1, 1995, with a diagnosis of alcohol dependence.<sup>(7)</sup> He participated in follow-up counseling during March 1995.

After his discharge, LTC G was of the opinion that Applicant should be allowed to return to his job as an aircraft radar mechanic without any restrictions. Although Dr. D recommended against it, he certified Applicant was capable of returning to his position. Applicant performed his duties without any problems until April 25, 1995. By April 1995, he had resumed drinking an occasional beer or glass of wine with a meal. Over the weekend of April 22-23, 1995, Applicant's daughter was in an ice skating exhibition in country C. Applicant drank heavily (scotch and beer) with members of his daughter's skating club the entire weekend. After returning home on that Monday, April 24, 1995, Applicant continued drinking. At work on April 25, 1995, a co-worker, while driving on the flight line in the same vehicle as Applicant, detected the odor of alcohol about Applicant's person and he notified the branch chief of the radar shop (Mr. K). Mr. K had a talk with Applicant and he also smelled alcohol. Applicant admitted to him that he had been drinking the entire weekend and that it was almost impossible for him to get his drinking under control.<sup>(8)</sup> The supervisor advised Applicant to seek help and promised not to report the incident to the command if Applicant stopped drinking. Mr. K warned Applicant that if he discovered that Applicant was using alcohol again, he would inform the proper authorities.

Over the weekend of May 6-7, 1995, Applicant was on weekend standby duty. On May 6, 1995, he was required to report to work on a radar aircraft failure. A co-worker (Mr. L), with whom Applicant worked closely on that date, reported to Mr. K on May 8, 1995, that he detected the odor of alcohol about Applicant's person on the job site on May 6. Mr. K immediately informed the acting squadron commander (CPT M). On May 9, 1995, CPT M with the endorsement of the commander, logistics wing, requested that Applicant be released from his work contract as the -----  
----- Squadron felt it could no longer accept Applicant as a worker due to his alcohol problems. Applicant called in sick on the Monday and Tuesday following the weekend. When he returned to work on May 10, 1995, he was informed that co-worker Mr. L had reported him for smelling of alcohol during weekend duty. CPT M withdrew Applicant's access to restricted areas and on May 12, 1995, Applicant was placed on authorized absence until his job situation was clarified. Applicant denies reporting to work smelling of alcohol on that Saturday, May 6, 1995. He submits co-worker Mr. L was lying for a couple of reasons, both of which Applicant admits are speculative. Applicant testified that Mr. L might have wanted to get back at him for only paying half of the agreed amount for four tires which

Mr. L sold him three weeks earlier, and/or for Applicant refusing to come in to work on both days of the weekend May 6-7. According to Applicant, had they worked on that Sunday, they would have received a 200% premium pay. As a consequence of finishing the radar repair on Saturday, they were back on standby status that Sunday with only a 25% premium. (Transcript, pp. 171-74). In support of his position that he was not under the influence of alcohol, Applicant points to the fact he was allowed to work the entire shift, Mr. L waited until the following Monday to report him, and that at least three co-workers who were also on duty on ay 6, 1995, did not find him to be under the influence of alcohol on that occasion. (See Applicant Exhibits B, C, and D.) Given Applicant's denial, it is incumbent on the Government to provide proof to the contrary. The Government presented neither the testimony nor a sworn statement from co-worker Mr. L as to his observations of Applicant's demeanor. Instead, the Government relies largely on the documented record of actions taken after the incident (Government Exhibits 13, 15, 16) and the testimony of Dr. D and LTC G, which are not enough to prove, in the face of Applicant's denial, that he consumed alcohol prior to reporting to work or was otherwise under the influence of alcohol on May 6, 1995.<sup>(9)</sup>

The request to terminate Applicant's employment contract was sent to the General for his approval. During discussions on the issue, the General asked whether it had been made clear to Applicant that another alcohol-related incident would mean the loss of his job. While Applicant had been warned verbally during his meeting with Dr. D, LTC G, and Mr. H of September 29, 1994, nothing had been reduced to writing. The General, who was new in his position, elected to give Applicant the opportunity to attend a third inpatient program as Applicant's failure to succeed in the treatment program at facility J may have been due to language problems.<sup>(10)</sup> Asked by the commander of the logistics wing for a medical assessment, Dr. D on June 13, 1995, rendered his professional opinion that Applicant was not able to perform his duties as outlined in his job description which included working on high voltage systems at high heights with dangerous gases and fluids and very large heavy parts. Applicant was allowed to return to work, but in an office environment.

After the incident of May 6, 1995, Applicant continued to drink alcohol at the rate of four to five beers per week and an occasional wine with dinner. Concerned that he was drinking more than he should, Applicant sought treatment from Dr. N, an English speaking psychiatrist and military wing commander with a foreign nation's air force. After an initial assessment on June 19, 1995, Dr. N determined inpatient treatment was not necessary and they continued in outpatient counseling for a total of ten sessions until March 1, 1996. Advised by Dr. N that he might be "playing with fire" by continuing to drink, Applicant was given the option to see whether he could handle one or two drinks. Applicant elected to continue to drink two or three beers on Friday nights when bowling. Relevant blood tests were performed and found to be within normal limits. Applicant presented as sober for all sessions with no odor of alcohol about his person. Psychometric testing performed by a consultant psychologist in early 1996 were normal for both short and long term memory.

Dr. D was required to render a medical assessment as to Applicant's progress back to the command. Not successful in getting Applicant to release any medical information with regard to his treatment with Dr. N, Dr. D on October 30, 1995, rendered his opinion that Applicant was focused more on keeping his job than with treating his disease of alcoholism. As far as Dr. D was concerned, Applicant's case was closed.

Applicant underwent his annual physical examination for his employment on February 13, 1996, which was conducted by an assistant to Dr. D. The examination disclosed nothing remarkable physically. On February 27, 1996, Dr. D, concerned with flight safety, deemed Applicant incapable of performing the duties laid down in his job description because of his drinking binges and alcoholism. Dr. D advised the commander that Applicant was, however, capable of performing office work.

On March 7, 1996, Dr. N issued his opinion regarding Applicant's fitness for work. Dr. N assessed Applicant as currently physically and psychologically fit to return to his primary duties as a radar mechanic, citing Applicant's recent physical examination which was unremarkable, normal blood count and liver function tests, the results of psychological testing which reflected no memory impairment, and Applicant's sober presentation throughout treatment. Dr. N could provide no guarantee about Applicant's future sobriety. He suggested the employer make it entirely clear to Applicant what consequences would follow if there were any future alcohol-related incidents.

Dr. D's opinion continues to be that Applicant is not capable to work as a radar maintenance technician responsibly or without additional quality control. Dr. D did not concur with Dr. N's assessment, but felt there was nothing more that he

could do from a medical standpoint.<sup>(11)</sup> On March 26, 1996, Dr. D informed Mr. H, the civilian personnel officer, of Dr. N's opinion that Applicant was currently fit to return to his primary duties. Dr. D indicated he would only agree to Applicant's return to the radar squadron if the squadron commander guaranteed to provide strict supervision and quality control of Applicant's work to ensure all safety regulations and procedures would be adhered to. As of October 16, 1996, LTC G, the squadron commander, continued to regard Applicant as an unacceptable risk to flight safety.<sup>(12)</sup>

After Dr. N rotated back to his country, Applicant continued in outpatient counseling with Dr. O, a psychiatrist and former colleague of Dr. N's. As of October 16, 1996, Dr. O had seen Applicant on two occasions with a number of telephone contacts, during which Applicant presented well in control of himself and not impaired by alcohol. On October 24, 1996, Dr. O rendered his professional opinion that Applicant is very well motivated towards gaining control over his drinking problems and has excellent insight into the situation. Dr. O acknowledged Applicant is continuing to drink at home, but it is under very close and strict control and it no longer impinges on his work with no complaints. Dr. O assessed Applicant's prognosis as "reasonably good," and opined that any drinking on Applicant's part would be most unlikely to affect work.

Since being placed in the information systems division on or about July 12, 1995, Applicant has found work less stressful. His performance has been outstanding and he has not allowed his off-duty alcohol use to impact his work.

Applicant considers himself an alcoholic, but feels he can drink alcohol at the rate of four or five beers a week and a glass of wine with dinner. While he used to feel that he could not drink, he submits he is now drinking for different reasons: "I drink only if it's--a glass of wine, we're sitting around and somebody says, 'Have a drink.'" (Transcript, p. 265).<sup>(13)</sup> Applicant drinks out with friends as well as at home alone if he fixes a nice dinner for himself.<sup>(14)</sup> Over the time frame of a Friday afternoon to Saturday night on one weekend in summer 1996, Applicant consumed a total of eight to ten beers. He last consumed alcohol (two beers) a week to a week and a half before his hearing.<sup>(15)</sup>

When Applicant drinks, it is always in the back of his mind that he has been to inpatient treatment programs. He continues to consume alcohol because he enjoys it and he expects to drink occasionally in the future.

## POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the seriousness, recency, frequency and motivation for an applicant's conduct; the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the circumstances or consequences involved; the age of the applicant; the absence or presence of rehabilitation, the potential for coercion or duress, and the probability that the conduct will or will not recur in the future. *See* Directive 5220.6, Section F.3. and Enclosure 2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be 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.**

Conditions that could raise a security concern and may be disqualifying include:

- (1) alcohol-related incidents away from work, such as driving while under the influence
- (2) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job
- (3) diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence
- (4) habitual or binge consumption of alcohol to the point of impaired judgment
- (5) consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program

Conditions that could mitigate security concerns include:

- (1) the alcohol related incidents do not indicate a pattern.

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Under the provisions of Executive Order 10865 and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

### Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the Applicant.

### CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility and demeanor of those who testified, this Judge concludes that the Government has established its case with regard to criterion G.

Applicant began to drink alcohol as a high school student. His underage consumption engenders little security concern where it was due largely to peer pressure. However, after entering active duty on March 9, 1965, Applicant began to suffer physical effects related to alcohol consumption. While his drinking fluctuated thereafter, he began a pattern of turning to alcohol to cope with the stresses of his duty assignments and marriage with an eventual loss of control over his consumption. After his spouse asked for a divorce in March 1982, Applicant drank daily after work and on weekends, in quantities of up to a liter of whiskey per occasion with adverse consequences (blackouts, alcohol-related tremors, problems at work). He presented for assessment at the base clinic on August 16, 1982, in an intoxicated

condition. Despite successful completion of an inpatient program at treatment facility B and a year of abstinence thereafter, Applicant resumed consumption at the rate of a few drinks on occasion, contrary to medical advice to remain alcohol-free. Unable to cope with a girlfriend's pregnancy in 1984/85, Applicant relapsed into heavy drinking.

During the first two years of Applicant's employment with the international organization Applicant was able to exercise control over his consumption. Consistent with his past pattern, however, Applicant began drinking a liter of whiskey per week when faced with relationship difficulties. To his credit, he pursued outpatient counseling with Dr. D during the first four months of 1989. This counseling had little appreciable affect on changing his behavior patterns, as Applicant in September 1989 went on a very serious drinking binge with negative impact on his work attendance. With the assistance of Dr. D, Applicant received two weeks of detoxification at treatment facility E and three months later, participated in his second inpatient treatment program at treatment facility B where he was diagnosed as suffering from alcohol dependence.

A period of abstinence in excess of a year after his second inpatient stay at treatment facility B was followed by gradual occasional drinking. Previous rehabilitation programs did not provide Applicant with the tools to cope responsibly with the losses of his brother and a close cousin, and Applicant went on a significant binge in August 1994. As he had in the past, Dr. D arranged for detoxification. As a result of this episode, Applicant's continued employment with the international organization was made contingent on him undergoing an inpatient "cure." Although initially reluctant, Applicant made the best of a treatment program at facility J conducted in a foreign language, diligently translating notes every evening. By April 1995, Applicant had gradually resumed drinking an occasional beer or glass of wine with a meal. Over the weekend of April 22/23, 1995, Applicant imbibed alcohol heavily with members of his daughter's skating club and his drinking continued after he arrived home that Monday. He had consumed alcohol to such an extent that both a co-worker and supervisor smelled alcohol on his person the following day at work.<sup>(16)</sup> That Applicant was willing to jeopardize his employment shows the degree to which alcohol remained a serious problem for him. Given his record of problem drinking and failed rehabilitation efforts,<sup>(17)</sup> he bears a heavy, although not insurmountable, burden to demonstrate reform.

In assessing the current security significance of Applicant's use of alcohol to the point of medically diagnosed dependence, this Administrative Judge must consider the Adjudicative Guidelines pertaining to alcohol consumption (criterion G). Of the five potentially security disqualifying conditions (DC), all are pertinent in this case. While dated, Applicant's drunk driving in May 1977 qualifies as an alcohol-related incident away from work under DC 1. Although there is no evidence that Applicant's work performance suffered on April 25, 1995, two co-workers detected the odor of alcohol about his person on that date. According to the testimony of the squadron commander, LTC G, proper procedure would have been to remove Applicant immediately from the work site. The fact that Applicant was not sent home does not extenuate his reporting to work smelling of alcohol, especially where he had been advised that any such incident could result in immediate termination of his contract.<sup>(18)</sup> Although Dr. D and Dr. N disagree as to the course of treatment Applicant requires for his problem and the degree of risk Applicant runs by continuing to drink, they both have assessed Applicant as suffering from alcohol dependence. An alcoholic who has consumed alcohol at times in moderation, Applicant on at least six occasions since 1982 has relapsed into very serious binges, and he continues to consume alcohol at the rate of four to five beers per week an occasional wine cooler with dinner, despite completion of three inpatient alcohol treatment programs.

Of the corresponding mitigating conditions (MC), only MC 1. has any applicability, and that is solely to alcohol-related incidents away from work, which in this case is limited to a lone drunk driving offense which happened more than nineteen years ago. As early as August 1982, Applicant was required to report to the base mental health clinic for an assessment because he was having work problems related to alcohol. With the exception of the April 25, 1995 incident, alcohol has since had a negative impact on his work in the sense that he was not able to report for duty because he was intoxicated. While there is no evidence Applicant was intoxicated on the job on April 25, 1995, the odor of alcohol from three days of heavy drinking was sufficiently strong to be noticed by two co-workers. It is therefore regarded as an alcohol-related incident at work of the type contemplated under DF 2.

Inasmuch as Applicant has been diagnosed as suffering from alcohol dependence, the Directive requires successful completion of inpatient or outpatient rehabilitation along with aftercare requirements, frequent participation in AA or similar organization, abstention from alcohol for a period of at least twelve months and a favorable prognosis by a



credentialed medical professional. To Applicant's credit, he has received since June 19, 1995, outpatient counseling on twelve occasions from a psychiatrist. Moreover, both his current psychiatrist (Dr. O) and his previous psychiatrist (Dr. N) consider their sessions with Applicant to have been successful, Applicant having gained significant insight into his alcohol problem. Although Applicant is not involved in AA or similar organization, his past involvement with AA while at treatment facility E had the unintended effect of increasing his desire to drink. Dr. O indicated on October 24, 1996, that he would be keeping Applicant under regular review, and his continued counseling is viewed as a viable alternative to AA. Moreover, he has given Applicant a favorable prognosis. Nonetheless, Applicant cannot satisfy MC 4. because of his continued consumption of alcohol.

The failure to satisfy the pertinent mitigating conditions is not necessarily dispositive, as factors such as the nature and seriousness of the conduct, the circumstances, the individual's age, motivation and extent of rehabilitation may yet warrant a positive outcome. Neither Dr. N nor Dr. O view Applicant's continued consumption of alcohol as an impediment to resuming his regular duties as a radar maintenance technician. In contradistinction, Dr. D is of the opinion that Applicant should abstain completely from alcohol and he would recommend another inpatient treatment program. Familiar with the specific demands of Applicant's position as a radar maintenance technician, Dr. D continues to regard Applicant as a risk to flight safety.

While it is certainly appropriate that the opinions of those qualified by virtue of knowledge, skill, experience, training or education be given serious consideration, they are not controlling. The weight to be afforded the opinion of an examining physician is to be judged in terms of the physician's professional qualifications, the comprehensiveness of his knowledge of the patient's medical history, and the soundness of the reasons given in support of his opinion. Dr. D is a physician licensed as a family practitioner who is also a flight surgeon in the military with major occupational/public health responsibilities on the base. While he does not possess the professional qualifications of a psychiatrist, he is not unfamiliar with alcohol problems, having testified that it is his day to day business to support people on the base to overcome their alcohol problems. (Transcript p. 67). Dr. D also has the benefit of personal experience with Applicant's alcohol history, having counseled him from December 1988 to April 1989, and referred him for detoxification in September 1989 and again in August 1994. He has witnessed first-hand the struggles Applicant has had in dealing with his alcohol problem.<sup>(19)</sup> It is also noted that Dr. D's recommendation of complete abstinence is consistent with the advice given to Applicant by those involved with his treatment at the United States military hospital. Dr. N is a qualified psychiatrist, although the extent of his experience with alcohol problems cannot be determined by the record.<sup>(20)</sup> According to Applicant, Dr. N left it up to him to see whether he could handle one or two drinks. Assuming Applicant was up-front with Dr. N about the extent of his drinking, Dr. N's assessment of March 7, 1996, pre-dates the summer of 1996 when Applicant over the course of a day and a half consumed eight to ten beers. Dr. O, a qualified psychiatrist with a reported interest in alcohol abuse, has the benefit of recent contact, but he has had only two counseling sessions with Applicant. More importantly, his favorable assessment is based, at least in part, on inaccurate and/or incomplete facts. With respect to the April 25, 1995, incident, Dr. O reports Applicant admitted to his supervisor that he had been drinking that weekend, although not all weekend. In his signed, sworn statement dated March 26, 1996, Applicant indicates he drank (both scotch and beer) heavily **all weekend** with the group from his daughter's skating club. Furthermore, Dr. O views Applicant's current consumption of alcohol as posing little, if any, risk to work performance on the basis that Applicant drinks at times at home but under very close and strict control and it no longer impinges on his work. Applicant testified that in addition to drinking an occasional wine cooler with dinner at home, he consumes beer when out bowling. A week to a week and a half before his hearing, he drank with co-workers on a Friday night after work in a situation which he described as a "big joke." Not only does Applicant drink outside the home, but there is also no evidence that Dr. O is aware of Applicant drinking eight to ten beers over the course of that Friday afternoon to Saturday evening in summer 1996. As noted by Department Counsel, it is unclear as to what "very close and strict control" Applicant reportedly is subjected to.

With due deference to Dr. O's expertise, this Administrative Judge is still not persuaded that Applicant's alcohol problems are safely behind him. To his credit, Applicant has not experienced any alcohol-related difficulties since April 1995. This in and of itself is not a guarantee against future abuse, especially considering Applicant's historical drinking pattern in that he has managed to drink responsibly for significant periods in the past only to relapse into serious binges. Faced with the loss of his job should he report to work smelling of alcohol, the most prudent course of action for Applicant would be to abstain completely. He continues to consume beer every week and an occasional wine cooler,

however. Moreover, he expects to consume alcohol occasionally in the future. Applicant submits that a recurrence is unlikely as he has learned to cope with his responsibilities and he has come to understand why he drinks. By his own admission, Applicant drinks because he enjoys it. An activity enjoyed is more likely to be repeated. While he claims he has made behavioral changes supportive of sobriety, Applicant has not confined his drinking to one or two wine coolers at home. His consumption of eight to ten beers over the course of a day and a half in summer 1996 is viewed as particularly excessive given his history of alcohol problems. Applicant has been advised by a number of medical and alcohol professionals that he should abstain. While he may be the rare alcoholic who can drink safely, he failed to convince this Judge at the hearing that he is well motivated toward even a "considerable degree of abstinence." By continuing to drink on a regular basis, Applicant increases the risk of a relapse. On balance, the security concerns engendered by his criterion G conduct warrant adverse findings with respect to subparagraphs 1.a., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., 1.k., 1.l., 1.m., 1.o., 1.p. and 1.q.<sup>(21)</sup> Subparagraphs 1.b. and 1.n. are concluded in his favor, nineteen years having passed since the offense alleged in 1.b. and the Government having failed to prove Applicant reported to work smelling of alcohol on or about May 6, 1995.

## **FORMAL FINDINGS**

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

### Paragraph 1. Criterion G: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: For 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

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: Against the Applicant

Subparagraph 1.l.: Against the Applicant

Subparagraph 1.m.: Against the Applicant

Subparagraph 1.n.: For the Applicant

Subparagraph 1.o.: Against the Applicant

Subparagraph 1.p.: Against the Applicant

Subparagraph 1.q.: 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.

**Elizabeth M. Matchinski**

**Administrative Judge**

1. The stipulation agreement itself was marked and entered into the record as Joint Exhibit 1. Government Exhibits 1, 2, 3, 4, 5, 6, 9, 13, 15, 16, 17, 18, 20, 21, 22, 23 were provided to this Administrative Judge prior to the hearing, their admission having been stipulated to by the parties. Although Government Exhibit 10 was also forwarded with the stipulation agreement, Applicant's counsel voiced his objection thereto at the hearing. Department Counsel having no objection to the admission and pre-hearing consideration of Applicant Exhibits A, B, C, and D, those documents were provided to the undersigned as well.
2. On October 25, 1996, Department Counsel filed a response to the exhibit. On October 28, 1996, Applicant filed a rebuttal to the Government's response. Department Counsel on October 30, 1996, presented additional comment. These documents were reviewed by this Judge in assessing the weight to be accorded the psychiatrist's opinion.
3. On November 27, 1996, the parties were provided the opportunity to propose corrections to the transcript. Department Counsel on December 6, 1996, submitted proposed corrections. The reference to "not stopping until 1996" appears at line 24 of page 26 (vice page 1). After reviewing the tapes of the hearing, the text should read, "not stopping in March of 1996." With regard to the second proposed correction, the text is found at line 6 of page 29. The reference should be to the "Statement of Reasons." Line 20 on page 36 should read, "I'm clear in my mind that that is, in fact, correct." On December 30, 1996, after the record had closed, Applicant's counsel submitted an article which appeared in a publication on December 19, 1996. That document was not considered during this Judge's deliberations.
4. Dr. D testified at the hearing that he did not believe outpatient treatment would help because prior outpatient counseling treatment had failed.
5. Dr. D explained at the hearing that prior to entry into an inpatient facility, an assessment was required by a drug and alcohol advisory service. Mrs. I performed that function in this case.
6. Applicant testified that he is conversant in country A's language, sufficiently so to take notes and later translate them, but that he did not have the vocabulary to adequately express his feelings.
7. At the hearing, Applicant testified that the clinic was nothing but a money-making deal. However, he also admitted that there was one qualified counselor who "just happened to be [his]." Transcript, p. 240. Nonetheless, he regards the last four weeks of the program as "almost a total loss."
8. A radar shift supervisor noted nothing out of the ordinary concerning Applicant's demeanor on April 25, 1995, and he received no complaints. (Applicant Exhibit F). Although Applicant smelled of alcohol, he was apparently able to perform his job duties.
9. On cross-examination, Dr. D testified to receiving a report on or about May 15, 1995, from the acting squadron commander to the effect that he thought Applicant was again under the influence of alcohol. Dr. D testified that the one witness (which Dr. D does not name) confirmed the incident and that Applicant admitted it happened. Dr. D further testified that he discussed with Applicant his concerns about the potentially negative impact on flight safety, and that Applicant thought that others had overreacted to the May incident. (Transcript, pp. 68-70). That report which was written by Mr. K, the branch chief in the radar shop (*See* Government Exhibit 15), reflects Applicant admitted to Mr. K in April 1995 that he was using alcohol again. Nowhere in the report does it indicate that Applicant admitted to drinking alcohol on May 6, 1995. LTC G testified that he was on temporary duty at the time of the May incident. On his return to work, he discovered that his deputy had removed Applicant from work. (Transcript, p. 124). On cross-examination, LTC G confirmed that if a person was to report to work smelling of, or outwardly appearing of, alcohol, the procedure would be to send that person home immediately. (Transcript, p. 128). LTC G admitted to his knowledge Applicant was allowed to work the entire day on both April 25, 1995 and on May 6, 1995. He attributed the failure to follow

established procedure to a lack of supervision, and countered that the co-workers who detected no evidence of alcohol about Applicant on May 6, 1995, do not work in Applicant's organization. For his part, LTC G did not doubt that co-worker L detected alcohol as this co-worker and Applicant worked closely together, to include driving in a small vehicle with Applicant. (Transcript, p. 134). LTC G indicated that everyone in the shop was aware of the conditions under which Applicant was brought back to work following his recent treatment. Asked whether it wouldn't be possible that someone could get Applicant in trouble by just stating he smelled alcohol on Applicant's breath, LTC G responded that the report led to a discussion with the shop chief who proved it had happened and Applicant agreed. (Transcript, pp. 138-39). In support, he referred to Mr. K's report in which Applicant admitted he still drinks alcohol. (Transcript, p. 139). Again, nowhere in that report is there an admission by Applicant that he consumed alcohol prior to reporting to work on May 6, 1995. The record is silent as to what actions those in supervisory positions took with respect to confirming co-worker L's account. This co-worker may well have smelled alcohol on Applicant's breath on May 6, 1995, but there is insufficient evidence to find that as a fact. Moreover, there is no evidence whatsoever that Applicant's work performance was negatively impacted on that date.

10. This would have been Applicant's third inpatient rehabilitation since his employ with the international organization. Not taken into account was Applicant's rehabilitation effort at treatment facility B back in 1982 when he was still in the military.

11. Dr. D testified that he still would recommend that Applicant obtain another two or three months of inpatient rehabilitation. (Transcript, p. 108).

12. The concerns expressed by Dr. D relate solely to flight safety. He had no problem with Applicant handling classified information in an office environment since Applicant was open about his problem and therefore not subject to blackmail. While LTC G was also concerned with the safety of those on the flight line, his testimony reflects a greater degree of insight into the potential concerns caused by the abusive use of alcohol:

It's very hard to say something that drunken person might talk to somebody else in a restaurant or where else and whether they then pass by information that they should not pass by. So knowing that somebody has an alcohol problem is something which may--would make me a little bit suspicious concern about that he might under the influence of alcohol misuse those information not--in or to actually do it but a person that has alcohol is not able to control what he says. So there is a certain concern.

(Transcript, pp. 152-53).

13. In a signed, sworn statement dated March 26, 1996, Applicant disclosed that since May 1995, he has consumed four to five beers a week and an occasional glass of wine with a meal. (Government Exhibit 4). Applicant indicated initially on direct examination that he was still drinking four or five beers a week and an occasional wine. (Transcript, p. 213). When asked by this Judge about his drinking habits since March 1966, Applicant testified to drinking Friday nights at the bowling alley maybe two or three beers and an occasional wine with dinner. (Transcript, p. 266).

14. Applicant admitted to drinking maybe two wine coolers with his dinner. "It's just that I really like red wine. It's a nice drink and I normally mix it with 7-Up and have a wine cooler." (Transcript, pp. 267-68).

15. "It was after work and occasionally the guys that I work with on a Friday afternoon they'll decide they're going to have a beer and so they go and get a six-pack and it's a big joke and so we all sit there and have a beer before we go home from work." (Transcript, p. 213).

16. Applicant reported to work smelling of alcohol on April 25, 1995 vice April 24, 1995. The time sheets reflect Applicant was on leave on April 24. The Directive requires applicants be given a written statement of the reasons which shall be as comprehensive and detailed as the national security permits. Applicant was sufficiently placed on notice that the Government was concerned about an incident in April 1995 where his shop supervisor and co-worker smelled alcohol on him. The variance in date is not fatal to the Government's case.

17. Applicant successfully completed three inpatient programs in that he complied with the therapeutic regimens and displayed some insight into his problem in each instance. These programs were not ultimately successful in effecting a

significant change in Applicant's drinking behaviors, however. As rehabilitation efforts, they are therefore regarded as failures.

18. Whereas the radar branch chief elected to give Applicant another chance, he did not report the incident until after Mr. L complained of Applicant smelling of alcohol on May 6, 1995. Had the command been made aware of the April 25, 1995 incident earlier, Applicant may well have been stripped of his restricted access at that point. LTC G testified that the April 25, 1995 incident would have provided grounds for immediate termination of Applicant's employment.

19. As the chief occupational health physician, Dr. D has a working knowledge of the specific job requirements for a radar maintenance technician. Therefore, he may well be in a better position to comment on the risk posed to flight safety should Applicant be allowed to return to his regular duties. He has no advantage over the psychiatrists, however, with respect to an assessment of security risk.

20. Applicant testified that Dr. N is a specialist in alcohol, but there is no evidence as to the frequency of Dr. N's treatment of alcohol patients or that he had a clinical focus in terms of experience and/or education in that area.

21. While treatment is viewed favorably, those allegations concerning inpatient and outpatient treatment are nonetheless found against him because of the persistent concerns raised by his subsequent alcohol problems and continued drinking following repeated treatment efforts.