

DATE: May 9, 1997

In re:

SSN:

Applicant for Security Clearance

DOHA Case No. 96-0403

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR THE GOVERNMENT

Teresa A. Kolb, Esq.

Department Counsel

FOR THE APPLICANT

Harriet Heuer Miller, 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, and as amended by Change 3, issued a Statement of Reasons (SOR) dated June 6, 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 June 25, 1996, Applicant responded to the allegations set forth in the SOR and indicated that a decision could be made in his case without a hearing. The Government subsequently compiled a File of Relevant Material which was forwarded to the Applicant in accordance with the provisions set forth in paragraph 7, Enclosure 3 to 5220.6. By letter dated October 18, 1996, Applicant, through counsel, submitted objections and supplemental material to the Government's file and requested a hearing. The case was assigned accordingly to this Administrative Judge on January 29, 1997, [\(U\)](#) and on February 27, 1997, a hearing was scheduled for March 20, 1997. At the hearing held as scheduled, ten Government exhibits and six Applicant exhibits were admitted into evidence, and testimony taken from the Applicant. A transcript of the hearing was received by this office on April 2, 1997.

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 34 year old ----- who has worked for his current employer (company A), a defense contractor, since January 1995. He seeks to retain his security clearance to continue his work ----- for -----
----- for the military.

Applicant began to consume alcohol at about age 15. While still in high school, he had his first experiences with hard liquor and wine. His recreational alcohol use caused him no academic problems. After graduating with honors from high school, he pursued further education and obtained his degree in electrical engineering in four years.

In June 1984, he commenced employment with a defense contractor (company B) where he performed -----
----- work geared toward ----- for the military. Circa 1986, he obtained a secret security clearance for his duties there.

After drinking at a bar on or about December 29, 1986, Applicant was arrested for disorderly conduct (two counts). He pleaded guilty to both counts and was fined about \$300.00 plus costs.

In the summer of 1988, Applicant made two significant lifestyle changes: he accepted a new job in a different geographic locale and in July 1988, he got married to a woman he met while working at company B. After drinking to excess at his farewell party on or about June 10, 1988, he was arrested for driving under the influence of alcohol. Applicant was found guilty of a reduced charge of driving while ability impaired (DWAI) for which he was fined \$250.00, his driver's license was suspended for 90 days, and he was ordered to attend a drinking driver program which he completed on or about May 17, 1989.

In August 1988, Applicant and his new spouse relocated upstate where he started working for company C, another defense contractor. About a year after the move, Applicant and his spouse began to experience marital discord. Applicant started drinking in quantities up to twelve beers on Friday and Saturday nights. On November 23, 1989, Applicant's spouse contacted the police during a domestic disturbance and reported that Applicant had threatened to kill himself with a knife. Applicant was highly intoxicated and despondent at the time of the incident. He was advised to sleep off the intoxication and no charges were filed.

After drinking at a football party on or about October 7, 1990, Applicant was arrested for driving while intoxicated (DWI), unsafe lane change and uninspected vehicle. On March 13, 1991, he pleaded guilty to DWI and was ordered to pay a \$350.00 fine and \$25.00 court costs and his driver's license was suspended. The remaining charges were dismissed.

The local police were called to Applicant's residence on April 27, 1991, after his spouse reported that he, in an intoxicated state, had physically assaulted her. No charges were filed.

Applicant and his spouse separated in early 1993. He continued to drink in quantities of up to twelve beers on Friday and Saturday nights. At around 12:01 a.m. on August 14, 1993, after drinking at a party, Applicant struck a guardrail resulting in an accident. Responding police detected a strong odor of alcohol on Applicant's breath, blood shot eyes, flushed face and slurred speech. Applicant was arrested for DWI, a class E felony due to his prior conviction; unlicensed driver; and running a red light. Prior to his court appearance on the charges, Applicant, on the advice of his lawyer, enrolled in an outpatient alcohol awareness program. From September 30, 1993 to January 27, 1994, Applicant attended sessions twice weekly at facility D and Alcoholics Anonymous (AA) three times per week. He abstained during the program as required. At the end of the program, it was recommended to him that he continue to remain alcohol-free.

Applicant resumed drinking, binging on weekends, to where he began to miss work with negative impact on his job performance. His employer offered him a less responsible position and in April 1994, Applicant was laid off from his job at company C. Despondent about being out of work, his drinking increased to where he experienced delirium tremens, and regular blackouts. Drinking beer around the clock on weekends and five to ten shots of liquor per week, Applicant sought consultation with a certified alcohol counselor who referred him to inpatient alcohol treatment at facility E. Applicant received inpatient treatment for a condition diagnosed as alcohol dependency syndrome and alcoholic hepatitis from April 22, 1994 to May 14, 1994, at treatment facility E. Safely detoxed, he worked hard in the program, attended all lectures and seminar groups, went to five AA meetings per week, and maintained abstinence. At discharge, he was advised to attend ninety AA meetings in ninety days as well as aftercare counseling. He was given a

guarded prognosis due to his unstable recovery environment (no job, marital separation and facing divorce).

Applicant began the aftercare program on June 1, 1994, for treatment of his alcohol dependence. As a condition of the program, he was to maintain abstinence, to attend the continuing care groups as well as a minimum of four AA meetings per week, to obtain a temporary sponsor in AA and to join a home group by June 31, 1994. Applicant attended four group meetings in June 1994 and either canceled or failed to show for sessions scheduled between June 29, 1994 and July 20, 1994. When he called to cancel for the July 13, 1994 session, Applicant admitted to the counselor that he had relapsed into drinking, but expressed his desire to get back into group. He was given an appointment for an individual counseling session the following day. Applicant failed to show for the individual session on July 14, 1994 or the next group session on July 20, 1994. He reported to the group session on July 27, 1994, and admitted to relapsing several times. Applicant stated he was motivated to stop drinking and to go to AA meetings every day, and group and individual sessions every week. Applicant did not report to, or call to, cancel the next session, but did attend the August 10, 1994, group at which he explained his absence was due to a job interview. He admitted he had not been going to many AA meetings and was confronted about his risk for relapse. He failed to show for the next two sessions and on October 19, 1994, Applicant was discharged from the program against medical advice with a poor prognosis for recovery.

On June 23, 1994, Applicant pleaded guilty to felony DWI for the offense committed on August 14, 1993. On July 15, 1994, he was sentenced to thirty days in jail to be served on weekends, to pay a \$1,000.00 fine, \$150.00 surcharge and \$5.00 to the crime victim fund, his driver's license was revoked, and he was placed on five years probation with special terms including participation in any treatment recommended by his probation officer and submission to random alcohol/drug testing. The motor vehicle infractions were dismissed.

Depressed about his failure to find work, Applicant relapsed in July 1994 into drinking between six to twelve beers several times per week with an occasional shot of liquor, definitely on the weekends and maybe once or twice during the week. After he reported to the county jail under the influence of alcohol, Applicant was formally charged with violation of probation. In court on July 25, 1994, Applicant was admonished that alcohol consumption was a violation of his probation and he was released.

Applicant continued to drink in the same pattern (six to twelve beers on weekends, once or twice during the week) through December 1994. In January 1995, he went to work for his current employer. This required his relocation to a geographic area in close proximity to his parents, sibling and friends with whom he grew up. Wanting to make a good impression at his new place of employment, Applicant from January 1995 confined his drinking to one day on the weekends, typically in quantity of six to twelve beers. He continued drinking at this rate to November 1995.

On July 21, 1995, Applicant was interviewed by a Special Agent of the Defense Investigative Service. Applicant admitted to the Agent that he had a problem with alcohol and wanted to seek help. To that end, he indicated that he would contact the corporate employee assistance program (EAP) that day to facilitate his entry into another treatment program. During a reinterview by DIS on August 10, 1995, Applicant stated he had contacted the EAP on July 21, 1995, who had assisted him in contacting the center for managed health care where he received an alcohol evaluation. Applicant reported that he expected to begin an outpatient program within the next week. Applicant did not pursue the treatment as it would not have been covered under his insurance. His health maintenance organization did not offer reimbursement for outpatient programs.

Although he was continuing to drink regularly once per week on weekends with some variation depending on the circumstances, Applicant returned to AA in October 1995 at the rate of three meetings on average per week. He stopped drinking by December 1995 and remained abstinent, with the help of AA, until the end of March 1996 when he relapsed into consuming one to two days on the weekends and one night during the week on occasion in quantities of no more than four or five beers on the week night and six to twelve on the weekends. With his resumption of alcohol use, he ceased going to AA meetings. Upset over an altercation at work, Applicant consumed in excess of a case of beer at his residence over the course of a Friday to Saturday evening April 26-27, 1996. On April 27, 1996, a fellow AA member called to ask where he had been. Applicant resolved to remain abstinent thereafter with the help of AA and he returned to meetings three days per week.

A friend at AA informed Applicant of an adult intensive outpatient alcohol program in the local vicinity. Applicant

enrolled in the three month program and completed it on September 12, 1996. Circa September 1996, Applicant also obtained a sponsor in AA who has twelve years of sobriety. Applicant calls this sponsor at least twice a week and sees him at a meeting once per week. In January 1997, Applicant on one occasion contacted his sponsor and expressed his fear that he was going to have an alcoholic beverage. Applicant coped with this urge to drink by going to an AA meeting with his sponsor. Applicant has a coin from AA marking ninety days of sobriety. He did not volunteer for his six month commemorative as he was not at a meeting on the occasion of his six month anniversary. As of March 1997, Applicant was attending AA meetings on average three times per week.

Since he stopped drinking at the end of April 1996, Applicant has been offered alcohol on occasion. He has informed his old friends that he has quit drinking alcohol. On those occasions where he has been offered alcohol by work acquaintances, he has told them that he just does not want a drink that evening.

Applicant has proven to be a conscientious and diligent ----- for company A, consistently meeting and in some cases exceeding job goals. He has an unblemished record with regard to the handling of classified information.

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, fighting, child or spouse abuse, or other criminal incidents related to alcohol use
- (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:

(3) positive changes in behavior supportive of sobriety

CRIMINAL CONDUCT

A history or pattern of criminal activity creates doubt about a person's judgment, reliability or trustworthiness.

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

- (1) any criminal conduct, regardless of whether the person was formally charged
- (2) a single serious crime or multiple lesser offenses

Conditions that could mitigate security concerns include:

None.

* * *

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 Criteria G and J.

Applicant commenced drinking when he was still in high school, but there is no evidence it caused him any legal, occupational or social difficulty until 1986 when he was arrested for disorderly conduct. A year and a half later, he was convicted of driving while impaired after consuming alcohol to excess at his farewell party on June 10, 1988. Yet, it was not until 1989, when experiencing marital discord that Applicant began to abuse alcohol habitually, consuming in quantity of up to *twelve beers on Friday and Saturday evenings. This binge drinking on weekends led to additional alcohol-related legal consequences, including October 1990 and August 1993 DWI offenses, and medically diagnosed alcohol dependence. On the advice of his lawyer, Applicant enrolled in an outpatient alcohol awareness program

following his August 1993 DWI offense. He abstained from alcohol for the four months when he was in the program but resumed binge drinking on weekends in 1994 with negative impact on his work performance and attendance. After being laid off from his job in April 1994, he started drinking to repeated blackouts and to the point of delirium tremens. To his credit, he sought consultation from a certified alcohol counselor and was referred to an inpatient alcohol program where he received treatment from April 22, 1994 to May 14, 1994, for medically diagnosed alcohol dependency syndrome and alcoholic hepatitis. By clinical record accounts, he applied himself with diligence to the program, attending all sessions and five AA meetings per week and maintaining abstinence. Notwithstanding his commitment to the program, he was given a guarded prognosis at discharge which was borne out by Applicant's relapse in July 1994 into drinking six to twelve beers several times per week and his failure to complete the aftercare program. The seriousness of his relapse is best evident in him being under the influence of alcohol when he reported to the jail to serve part of his criminal sentence for his August 1993 felony DWI offense. Applicant continued to abuse alcohol against medical advice to abstain until the November 1995 time frame. With the assistance of AA which he had resumed in October 1995, Applicant remained completely abstinent until the end of March 1996, when he started drinking in quantity consistent with past patterns. Over the evening of April 26, 1996, and through the following day, Applicant consumed in excess of a case of beer at his residence. Given the magnitude of his alcohol problem and the recency of his latest relapse, he bears a particularly heavy burden to demonstrate reform.

In assessing the current security significance of Applicant's criterion G conduct, this Administrative Judge must consider the Adjudicative Guidelines pertaining to alcohol consumption set forth in Enclosure 2 to the Directive. Of the five potentially security disqualifying conditions (DC), all are apposite. Applicant's December 1986 disorderly conduct, June 1988 DWAI, October 1990 DWI and August 1993 DWI qualify as alcohol-incidents away from work under DC 1. (2) There is information in the medical records that Applicant's abusive use of alcohol negatively impacted his work performance and attendance in early 1994, and that as a consequence, he was offered a less responsible position with decrease in pay. Applicant admitted to treating personnel at facility E that he experienced work-related problems, to include loss of job, taking time off, using alcohol before or during work, at lunch or break, and problems with supervisors and co-workers. Whereas Applicant was diagnosed as suffering from alcohol dependency syndrome by a physician at facility E, DC 3., also must be considered. His pattern of binge drinking regularly on the weekends, furthermore, falls within DC 4. Finally, where he relapsed into drinking against medical advice after completing an inpatient alcohol rehabilitation program and while he was enrolled in aftercare counseling, DC 5. also applies.

On review of the corresponding mitigating conditions (MC), there is a pattern to his repeated drunk driving incidents and his problem is too recent to apply Cs 1. or 2., respectively, in his favor. Applicant's maintenance of an alcohol-free lifestyle since April 27, 1996, three times weekly AA attendance and his completion of a three month adult intensive outpatient alcohol program are regarded as positive changes in behavior supportive of sobriety (*See* MC 3.). However, whereas a credentialed medical professional has diagnosed Applicant as suffering from alcohol dependency syndrome, Applicant is required for mitigation to successfully complete an inpatient or outpatient rehabilitation along with aftercare requirements, participate frequently in AA or similar organization, abstain from alcohol for a period of at least twelve months and receive a favorable prognosis by a credentialed medical professional (*See* MC 4.). As reflected in Exhibit C, Applicant on September 12, 1996, successfully completed an adult intensive outpatient alcohol treatment program. However, his ten and a half months of abstention falls short of the minimum one year required and there is not the favorable prognosis by a credentialed medical professional.

The failure to satisfy the pertinent mitigating condition 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 nonetheless warrant a positive outcome. Applicant's recent relapse over the arch 1996/April 1996 time frame occurred despite a stable living and job situation. In contrast to 1994 when he was despondent over unemployment, Applicant since January 1995 has been working for an employer who values his services. He has resided in sufficient proximity to his parents, sister, and close friends to see them regularly. Moreover, although his two children are some distance, his spouse has not proven any hindrance to visitation. It is also noted that when he resumed drinking, it was in quantity and frequency similar to previous patterns which leads this Administrative Judge to question the benefit of his prior inpatient treatment or his affiliation with AA from October 1995. To his credit, he returned to AA at the end of April 1996 and in about September 1996 obtained a sponsor which he never had before. However, he is only on the second step of the AA program. As he testified, he had reached the third AA step before, yet that was not sufficient to sustain his sobriety. As recently as January 1997, he had a craving for alcohol, after he had completed the intensive outpatient program. While

he acted appropriately and contacted his sponsor, it is too soon to tell whether AA will provide the support necessary for him to maintain continued sobriety. Applicant has his three month sobriety coin, but did not volunteer for his six month coin as he was not present at a meeting for his six month anniversary. Recognizing that such AA benchmarks may not carry the same significance for all individuals, it is not his failure to volunteer for the coin but the fact that he did not attend a meeting on such an anniversary without any explanation therefor which engenders some concern. Furthermore, this Administrative Judge finds it significant that when offered alcohol by office friends, he declined to partake, but told them only that he did not feel like he wanted a drink that evening.⁽³⁾ While it is not necessary that he reveal his alcoholism to co-workers, his testimony shows he has difficulty telling others who don't know of his past problem that he no longer drinks alcohol. His commitment to sobriety and the AA program is regarded as genuine, but too recent for this Administrative Judge to find his alcohol problem is safely of the past. Applicant's work record, unblemished by any security violations, merits favorable comment, but it is not enough on balance to overcome the concerns which persist because of his very serious criterion G conduct. Accordingly, subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., 1.k. and 1.l. are resolved against him.

The Government's case with respect to criterion J is based solely on the fact that his August 1993 DWI is a felony offense. With regard to the pertinent Adjudicative Guidelines, DC 1. (any criminal conduct) and 2. (single serious offense) must both be considered. Conduct which poses a substantial risk to the safety and health of others is regarded as especially egregious, and this Administrative Judge is not persuaded by Applicant's position that criterion J is inapplicable. Although the Government alleged only the August 1993 offense as criminal, presumably because of its felony status, the evidence establishes that Applicant has prior DWAI and DWI convictions on his record. The conduct therefore cannot meet the requirement of isolation for mitigation under MC 2. Moreover, where the felony DWI took place in August 1993, it is viewed as too recent for application of MC 1. Furthermore, Applicant is currently on probation for the offense. While this probationary status does not preclude a finding of successful rehabilitation, it is noted that the state does not yet consider his reform complete. Whereas this Administrative Judge cannot be sanguine that Applicant's alcohol problems are safely behind him, there exists an unacceptable risk that he may engage in similar drunk driving behavior in the future. Subparagraph 2.a. is thus concluded against the Applicant.

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.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: Against the Applicant

Subparagraph 1.1.: Against the Applicant

Paragraph 2. Criterion J: AGAINST THE APPLICANT

Subparagraph 2.a.: 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 file forwarded to this Judge at the time of assignment included Applicant's statement of objections (six pages) and supplemental material, consisting of five additional documents. At the hearing, the supplemental material was returned to Applicant's counsel for proffer at her election during Applicant's case in chief. Applicant's six page statement of his position and objections, dated October 17, 1996, was incorporated as part of his Answer to the SOR.

2. While the police were called to his residence in April 1991 because of reported assault by Applicant on his spouse, he denies striking her and there is no evidence confirming physical abuse.

3. When asked on cross-examination whether his friends have been supportive, Applicant testified:

Well, it depends who I'm with; yes, absolutely. If I go with people from work, I don't dwell on my reasons, so I don't really mention it. I just tell them that I didn't feel like I wanted a drink tonight. I quit, whatever, but people who knew my problem are very supportive.

(Transcript, p. 96).