

DATE: February 26, 1997

In re:

SSN:

Applicant for Security Clearance

ISCR OSD Case No. 96-0708

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR THE GOVERNMENT

Teresa A. Kolb, Esq.

Department Counsel

FOR THE APPLICANT

Pro se

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 September 27, 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 October 7, 1996, Applicant responded to the allegations set forth in the SOR and requested a hearing. The case was assigned accordingly to this Administrative Judge on November 12, 1996, and on January 10, 1997, a hearing was scheduled for January 28, 1997. At the hearing held as scheduled, six Government exhibits were admitted into evidence and testimony was taken from the Applicant. A transcript of the hearing was received by this office on February 19, 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 31 year old ----- who has worked for his current employer, a defense contractor, since March 1990.

While still in high school, Applicant began drinking beer, "letting it go" on weekends because all his acquaintances did. After the death of his twin sister in an automobile accident in July 1984, Applicant became increasingly depressed.

Drinking at a New Year's Eve party on December 31, 1984, Applicant became extremely angry after an argument between two good friends. Ready to "explode" for several weeks, the argument precipitated his frustration and after leaving the party, Applicant attempted suicide by cutting his left wrist. When he told his mother of the incident the following day, she brought him to the emergency room of a local hospital (hospital A) where he was admitted with a diagnosis of major depression without psychotic features and placed on fifteen minute checks. His depression cleared rapidly on the psychiatric unit and he was discharged on January 14, 1985, with a diagnosis of dysthymic disorder and adjustment disorder with depressed mood. Prognosis was fair provided Applicant remained in psychotherapy.

In July 1989, Applicant filed for divorce when he discovered his wife was intimately involved with a friend to whom they had given shelter. Depressed and hurt by the breakup of his marriage and the recent death of his father, Applicant began to drink heavily. On or about November 5, 1989, Applicant expressed suicidal ideation to a friend, stating that he wanted to shoot himself with a shotgun. This friend brought Applicant to hospital A where he was admitted on November 5, 1989, to the psychiatric unit where he was treated with medication, group therapy and individual therapy. On November 13, 1989, he was discharged with a diagnosis of major depression, recurrent episode, and alcohol abuse,⁽¹⁾

to continue on Doxipan and Mellaril medications, follow-up with the mental health clinic, and to attend Alcoholics Anonymous (AA). Applicant did not follow-up with the outpatient program as he was feeling better and did not think he needed it.

Although Applicant had decided to quit drinking because it contributed to his depression, once he was feeling better, he resumed alcohol consumption. On June 23, 1990, he was arrested for drunk in public while partying in a resort area. He paid a fine of \$55.00 for the offense.⁽²⁾

Applicant continued to consume alcohol at the rate which gradually decreased by mid 1995 to a beer a day and a couple on Saturday nights. When his second wife decided to stop drinking, she asked Applicant to maintain abstinence as well. Applicant elected to continue drinking. After consuming approximately six to eight beers during the evening of May 17, 1996, Applicant was pulled over en route home during the early morning hours of May 18, 1996, for crossing the center line. He failed a field sobriety test and was arrested for driving while intoxicated (DWI) and crossing center line of roadway. Applicant applied for, and was admitted to, a pre-trial alcohol education program.

After his DWI offense Applicant resumed his pattern of drinking a beer a day and a couple of beers on Saturday nights. On October 7, 1996, Applicant commenced the pre-trial education program where he learned about the potentially harmful effects of alcohol.⁽³⁾

After his second or third class session, Applicant asked to borrow a book on the twelve steps of AA. On or about November 12, 1996, Applicant resolved to stop drinking. Aware that his sister-in-law went to AA, Applicant approached her about AA and accompanied her to an AA meeting on November 14, 1996. Applicant did not miss any sessions of the pre-trial education program, and he completed the program successfully in mid December 1996. At his last class, it was recommended to Applicant that he commence an affiliation with AA and attend four meetings per week. No additional treatment was suggested.

Since November 14, 1996, Applicant has remained abstinent from alcohol and attended AA on average twice per week, speaking at the meetings. Because of his 72 hour work week and child care obligations, Applicant can only reasonably manage two meetings instead of the recommended four. He does not yet have a sponsor in AA, but he has numbers of fellow AA members who he can contact if he needs assistance in maintaining sobriety. Applicant and his spouse went to a New Year's eve party on December 31, 1996, with fellow AA members where no alcohol was served. Applicant intends to continue his affiliation with AA at his present rate of twice per week and to remain alcohol-free as he wants to avoid any recurrence of the problems alcohol has caused him in the past. He no longer has any alcohol at his residence.

Applicant has never allowed alcohol to impact his work performance or attendance. While he never reported to work under the influence, a couple of times he went to work suffering from a hangover.

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
- (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

Conditions that could mitigate security concerns include:

- (3) positive changes in behavior supportive of sobriety

* * *

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 the Applicant, this Judge concludes that the Government has established its case with regard to criterion G.

Applicant presents a history of alcohol consumption from the early 1980's when he was an immature high school student. While his underage drinking is not condoned, alcohol did not really become a problem for him until July 1989 when he began to drink heavily after his first spouse left him.⁽⁴⁾

After approximately four months of heavy drinking and increasing depression, Applicant expressed suicidal ideation to a friend. With this individual's help, Applicant admitted himself on November 5, 1989, for the second time to the psychiatric unit of hospital A where he was diagnosed by a credentialed medical professional as suffering from alcohol abuse in addition to major depression. On admission, he was prescribed Ativan medication for alcohol withdrawal, but it was found he did not need the drug. At discharge, Applicant was advised to attend AA, but he elected not to as he was feeling much better. Applicant resumed drinking at the rate of a beer a day and a couple on weekends. Despite the moderate amounts consumed, his drinking engenders concerns due to its regularity. Alcohol clearly was a part of Applicant's everyday lifestyle, and this drinking ultimately led to a DWI on May 18, 1996. Those to whom classified information is entrusted must be relied on to safeguard this material both during business and on-business hours. The off-duty abuse of alcohol to intoxication, even on an episodic basis, is incompatible with this duty due to the obvious potential for intentional or inadvertent disclosure when one is under the influence. Given the recency of this drunk driving offense, Applicant bears a particularly heavy, although not insurmountable, burden to demonstrate there will be no recurrence.

In assessing the current security significance of Applicant's alcohol abuse, this Administrative Judge must consider the Adjudicative Guidelines pertaining to alcohol consumption. Of the five potentially security disqualifying conditions (DC), DCs 1., 3. and 4. are applicable. Applicant's 1990 drunk in public and his 1996 DWI offenses are alcohol-related incidents away from work of the type contemplated within DC 1. Whereas Applicant was diagnosed as suffering from alcohol abuse by a physician in 1989, DC 3. must likewise be considered. On the occasions of his 1990 drunk in public and 1996 DWI at least, Applicant can be said to have engaged in binge drinking.⁽⁵⁾ While an evaluation of his criterion G conduct should include DC 4., there is no evidence of any heavy drinking for an extended period since 1989.

On review of the corresponding mitigating conditions (MC), the repeated alcohol-related incidents and the recency of the DWI preclude favorable application of Cs 1. and 2. Whereas he has been diagnosed by a credentialed medical professional as suffering from alcohol abuse,⁽⁶⁾ he is required under MC 4. to have successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participate frequently in AA or similar organization, abstained from alcohol for a period of at least twelve months, and received a favorable prognosis by a credentialed medical professional. Completely alcohol-free only since November 13, 1996,⁽⁷⁾ Applicant falls far short of satisfying the one year abstention requirement. Furthermore, there is insufficient evidence of the nature of the pre-trial education program to find that it qualifies as an outpatient rehabilitation program of the type contemplated in the Directive.

Failure to satisfy the pertinent mitigating condition does not necessarily mandate an adverse outcome as the adjudicative decision involves the careful weighing of all available, reliable information about the person. Applicant's present lifestyle is sufficiently conducive of continuing sobriety to warrant grant of a security clearance. Applicant took the initiative to learn more about AA, when during his second or third session of the pre-trial education program, he asked to borrow the twelve-step book. He took positive action, approaching his sister-in-law about the AA program, and he

commenced regular attendance at meetings while he was still in the pre-trial education program. Applicant has joined a particular AA group and speaks regularly at meetings. Applicant adequately explained why he manages to go to only two rather than the four AA sessions per week recommended. Given the recency of his AA involvement, Applicant understandably is still working on the first of the twelve AA steps and he has not yet obtained a sponsor. Even though his commitment to sobriety is of only a few months duration, there is no evidence he will not be able to abide by his stated resolve. It is noted that he has not been diagnosed as alcohol dependent nor has any treatment beyond AA been recommended to him. On balance, his recent efforts in reform are sufficient to overcome the concerns engendered by his criterion G conduct. Subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e. and 1.f. are therefore resolved in his favor.

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: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Elizabeth M. Matchinski

Administrative Judge

1. Applicant testified he did not realize he was being treated for an alcohol problem in 1989. He sought treatment at the psychiatric hospital because he was "pretty mixed up at that time with [his] life" following the death of his father that week. (Tr. pp. 24, 29).
2. The National Agency Questionnaire, dated February 8, 1996 (Government Exhibit 1), reflects two offenses for drunk in public to have occurred in April 1989 and July 1993. During his June 6, 1996 DIS interview, Applicant maintained that he had been arrested only once for drunk in public, on June 23, 1990, and he was at a loss to explain the discrepancy. The Government presented no police or court records to prove there was more than one incident.
3. Applicant testified that the program did not mandate that the participants totally abstain from alcohol, but they were advised not to report to a session under the influence of alcohol. (Tr. p. 38). While Applicant continued to consume alcohol at the rate of a beer a day and a couple of beers on Saturday nights (Tr. p. 33) during his first month in the program (until November 12, 1996), there is no evidence that he reported under the influence.
4. While Applicant had consumed alcohol prior to his suicide attempt of New Year's Eve 1984, his action was due largely to pent up frustration with the police and his own inability to cope psychologically with the death of his twin sister that July. Alcohol may well have been a contributing factor, but he was not diagnosed as having an alcohol problem and the record reflects no regular abusive drinking until 1989.
5. The Directive does not define the terms habitual or binge. The predominant definition of the noun binge is "a drunken

revel," and the term is commonly used in reference to drinking heavily. *See Webster's Ninth New Collegiate Dictionary* (1985). With respect to his May 1996 DWI, Applicant consumed six to eight beers on that occasion and he was intoxicated.

6. Although Applicant has a history of abusing alcohol and he thinks he is an alcoholic, there is no medical record evidence reflecting Applicant suffers from medical dependence.

7. The evidence reflects Applicant imbibed his last drink of alcohol on November 12, 1996, and attended his first AA meeting on November 14, 1996.