

DATE: May 12, 1997

In re:

SSN:

Applicant for Security Clearance

ISCR OSD Case No. 97-0118

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR THE GOVERNMENT

Martin H. Mogul, 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, as amended by Change 3, issued a Statement of Reasons (SOR) dated January 30, 1997, 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 February 18, 1997, Applicant responded to the allegations set forth in the SOR and requested a hearing. The case was assigned accordingly to this Administrative Judge on March 27, 1997, and on that date, a hearing was scheduled for April 21, 1997. At the hearing held as scheduled, three Government exhibits were admitted into evidence and testimony taken from Applicant and a co-worker on his behalf. A transcript of the hearing was received by this office on April 28, 1997. [\(U\)](#)

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 41 year old ----- who has worked for his current employer (company A), a defense contractor, most recently since 1989. He seeks to retain his Confidential security clearance which he has held in connection with that employ from May 1979 to September 1986 and then from June 4, 1989, to present.

Applicant began to consume alcohol in 1973 following his graduation from high school. In 1975, he started to use marijuana recreationally, but abstained from the drug over the next three years (1976-78). Applicant resumed the use of marijuana in 1979, and abused the drug a dozen to fifteen times per year until 1987 with occasional purchase.

In the early 1980's alcohol started causing Applicant marital problems and missed time at work. By late 1983, he had become a daily drinker of primarily beer with some shots of sweet liqueurs and experienced alcohol-related blackouts. Having received warning slips at work for absenteeism, Applicant sought out company A's employee assistance program (EAP) and was referred to an alcohol rehabilitation facility (treatment facility B).

At the referral of the EAP, Applicant was treated on an inpatient basis from December 21, 1983 to January 18, 1984, at treatment facility B for a condition diagnosed as continuous chronic alcoholism. Applicant was safely detoxified, attended and participated in all groups, films and in twice weekly individual therapy. He went to Alcoholics Anonymous (AA) meetings daily. He was discharged after twenty-eight days, condition improved, to return to work with the recommendation that he attend AA meetings, obtain a sponsor in AA, and seek family therapy. Applicant's prognosis at discharge was guarded.

Applicant resolved after the program to abstain from alcohol. He managed to remain alcohol-free for about two months, (2) when he relapsed into primarily beer drinking at the end of March or early April 1984. Sometime in 1985, Applicant was arrested for driving while intoxicated (DWI). He was required to complete an alcohol education program consisting of class once per week for ten weeks and he lost his license. After he completed the program, his license was reinstated only to be revoked when he did not attend a recommended follow-up program. Applicant has never reapplied for reinstatement of his license, electing instead to car pool to work and rely on others for transportation.

In addition to continuing his recreational marijuana abuse, Applicant in 1984 or 1985 used stimulants experimentally, purchasing a minimal amount.

By 1986, Applicant was drinking forty ounces of beer and two shots, enough to become intoxicated, just about every day, usually abstaining on Sundays. Experiencing marital difficulties and lost time at work (not to the extent of formal warning notices), Applicant readmitted himself in mid 1986 to treatment facility B for a twenty-eight day stay. He had a poor attitude during the program and although advised to abstain, he returned to daily beer drinking only two weeks after his discharge. In September 1986, he quit his job at company A. His alcohol consumption increased and at the end of 1986, he started imbibing hard liquor. Applicant continued to drink beer and hard liquor on a daily basis for several years. Over the 1986/88 time frame, he also ingested cocaine on about a dozen occasions total while partying. He purchased the drug a couple of times, spending \$25.00 each time.

Applicant reapplied for employment at company A in early 1989. Completely drug and alcohol-free for about four months, he was rehired in about May 1989 and he returned to drinking about two months later in quantity of a half a pint a week. Applicant was given custody of his son in 1990, and this helped him maintain the same level of consumption until about May 1991. In early May 1991, he went to work on third-shift. He stopped drinking for a couple of weeks but found he could not sleep. He resorted to beer as a possible inducement to sleep, and by June 1991, he was drinking two to three times per week forty ounces of beer plus two shots to a half a pint of liquor. He experienced alcohol-related blackouts, but did not suffer from delirium tremens or seizures. Applicant's alcohol abuse caused him to miss six days of work during the May/June 1991 time frame and he received a warning slip from his employer.

Unable to stop drinking on his own, Applicant sought admission on June 26, 1991, to another twenty-eight day inpatient program at treatment facility B where he was diagnosed as suffering from alcohol dependence. Applicant made minimal progress during the treatment as he was unwilling to look honestly at himself and was against outpatient counseling. At discharge on July 26, 1991, he planned on attending seven AA meetings per week but was vague about which meeting he would go to. His condition was improved on discharge but he was given a poor prognosis for recovery due to his lack of cooperation.

Applicant abstained for only a couple of months after his discharge when he resumed drinking hard liquor three or four times per week. He managed to maintain some control in that while he continued to lose time at work related to his alcohol abuse, his absenteeism was within company guidelines. Abstinent from illicit drug use since 1988, Applicant

resumed his abuse of marijuana in 1994. From June 1994 to about December 1995, he abused the drug on the order of ten times.

In September 1995, his son went off to college and Applicant's drinking consequently increased. Between September 1995 and December 1995, Applicant imbibed close to a pint of hard liquor five times per week in the evenings after work. In January 1996, he began binge drinking where he would not report to work for three or four days in a row. By March 1996, he was drinking a pint of vodka per day on workdays, and up to quart of vodka when he was not working. His marijuana abuse increased as well during this period of binge drinking. From January 1996 through March 1996, he smoked marijuana twenty-five times, usually on the weekends, and purchased it twice for personal consumption.

On March 29, 1996, Applicant was admitted for the fourth time to treatment facility B for management of alcohol and marijuana dependence.⁽³⁾ After five days on the detoxification unit, he was transferred to the full-day outpatient program where he remained a patient for eighteen days. During the program, Applicant went to AA every night as required for a couple of weeks but he exhibited resistance to AA and did not obtain a sponsor. Applicant left the program with a poor attitude and only two days after his April 23, 1996, discharge relapsed into heavy drinking, about a pint and a half of vodka four or five days a week to repeated blackout.

Realizing he again needed treatment, Applicant sought admission for the fifth time to treatment facility B on May 20, 1996; chief complaint "alcohol dependence for seventeen years." After five days of detoxification treatment, he was transferred to the outpatient program where he was a patient for another eighteen days. Applicant began going to smaller AA meetings while in the partial program but never did obtain a sponsor. He continued to minimize his drinking and had not been able to identify relapse triggers. At discharge on June 14, 1996, Applicant had a very positive attitude about his recovery but no effective plan for abstinence from alcohol and drugs. An early recovery group was recommended to Applicant but he indicated he could not attend due to his lack of a driver's license. He was referred back to his employer's EAP for follow-up counseling and advised to continue in AA and to remain alcohol-free.

Applicant went to AA for ten days after his discharge in an effort to stop drinking. He maintained abstinence for about two weeks before resuming drinking, albeit in a "controlled" fashion (no bingeing and not missing work). In an effort to obtain a prescription for Antabuse, Applicant on September 9, 1996, contacted a union representative who put him in touch with an EAP counselor. Applicant saw the EAP counselor three times: once in September 1996 and twice in October 1996. Applicant did not follow through on the counselor's recommendation to maintain complete abstinence from alcohol, but he managed to reduce his drinking to two days per week. In November 1996, he cut back his drinking to once per week in quantity of four mixed drinks on Saturday nights. He continued to consume alcohol in the same pattern to at least April 19, 1997. On three Fridays since November 1996, Applicant in addition imbibed as much as seven mixed drinks per occasion, the last time in early spring 1997. Applicant considers himself an alcoholic who is presently in control of his drinking. He has not thought about quitting alcohol use altogether and concedes the possibility that he could lose control in the future, even if nothing is going wrong in his life.

Applicant has not abused any controlled dangerous substance since March 1996 and does not consider drugs to have ever been a problem for him, notwithstanding the diagnosis of marijuana dependence.

Applicant is well-liked by his co-workers and his job performance is considered adequate.

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 under the influence. . .
- (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:

None.

DRUG INVOLVEMENT

Improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

Drugs are defined as mood and behavior altering:

- (a) drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens) and
- (b) inhalants and other similar substances.

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

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

- (1) any drug abuse
- (2) illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution

Conditions that could mitigate security concerns include:

- (1) the drug involvement was not recent
- (2) the drug involvement was an isolated or infrequent event

* * *

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 H.

Applicant has struggled with a serious alcohol problem for over twenty years. In 1983, he began daily consumption of beer with negative consequences for his marital relationship and work attendance. After receiving warning slips for absenteeism, Applicant entered an inpatient alcohol rehabilitation program for treatment of chronic alcoholism on December 21, 1983. Despite his adherence to the therapeutic regimen, Applicant remained abstinent for only two months after discharge. In 1985, he committed his lone alcohol-related drunk driving offense. By 1986, he was consuming beer and shots to intoxication almost daily. Concerned about his loss of control over his drinking, Applicant sought readmission to treatment facility B in mid 1986 where he remained for twenty-eight days as an inpatient. Applicant returned to drinking only two weeks after his discharge, which he attributes to his poor attitude during the program. After he quit his job in September 1986, his drinking increased to where by the end of the year he had turned to hard liquor as well as beer. For several years, he imbibed alcoholic beverages on a daily basis. He managed to stop drinking for about five months total in early 1989 in the hopes of regaining employment at company A. Shortly after his rehire, Applicant resumed alcohol consumption at the rate of a half pint of hard liquor per week. In May 1991, unable to sleep after transferring to the third shift at work, Applicant began drinking heavily and missed six days of work as a result. After receiving a warning notice for absenteeism from his employer, Applicant went back to treatment facility B for his third attempt at rehabilitation. He made minimal progress in the program, however, and the poor prognosis for recovery was borne out by his inability to maintain abstinence thereafter for more than a couple of months. He managed to continue drinking without adverse affect on his work attendance for about four years, aided by him gaining custody of his son. When his son went off to college in 1995, Applicant increased his consumption of alcohol to five days per week. In January 1996, he began binge drinking where he failed to report to work for three or four days in a row. By March 1996, his consumption levels had reached a pint of vodka per day on workdays and a quart on non-workdays. Lacking control over his consumption, Applicant admitted himself to treatment facility B for the fourth time on March 29, 1996. Due to his benefit coverage, his care was on an outpatient basis following detoxification. He resisted AA and had a poor attitude during the program. Only two days after discharge, he relapsed into heavy drinking to the point of repeated blackouts. In yet another effort to get a handle on his problem, he underwent rehabilitation treatment for the

fifth time over the May/June 1996 time frame. Two weeks after his discharge from that outpatient program, he resumed drinking against medical advice, which has continued to at least April 19, 1997.

In evaluating the current security significance of the aforesaid criterion G conduct, this Administrative Judge must consider the Adjudicative Guidelines pertaining to alcohol consumption which are set forth in Enclosure 2 to the Directive. The 1985 DWI offense is an alcohol-related incident away from work of the type contemplated under disqualifying condition (DC) 1. Although Applicant has "lost time" at work over the years due to his abusive involvement with alcohol, even to the extent of receiving warning notices from his employer, and was drinking a pint of vodka on workdays in March 1996, there is no indication that he reported to work under the influence of alcohol or consumed alcohol on the job. There is insufficient evidence of impairment on the job to warrant consideration of DC 2. However, DCs 3., 4. and 5. are clearly applicable. Credentialed medical professionals at treatment facility B have diagnosed Applicant as suffering from alcohol dependence. Furthermore, Applicant has a history of habitual consumption of alcohol to excess, relapsing into drinking, against medical advice, after each of his five alcohol rehabilitation programs.

Whereas Applicant has been diagnosed as suffering from alcohol dependence, he is required for mitigation to successfully complete inpatient or outpatient rehabilitation along with aftercare requirements, participate frequently in an organization such as AA, abstain from alcohol for at least twelve months, and receive a favorable prognosis by a credentialed medical professional. (4) Applicant fulfills none of the requirements of mitigating condition 4. While he has attended five alcohol rehabilitation programs, the first three of which were inpatient, Applicant relapsed into drinking without any appreciable period of sobriety after each. He failed to comply with the aftercare recommendations in each instance, has not abstained from alcohol since the last program, and lacks a favorable prognosis. To his credit, Applicant, through the union at work, contacted his employer's EAP in September 1996 and participated in three counseling sessions. While he has managed to cut his drinking back to Saturday nights since November 1996, his continued consumption in what he considers a "control practice" is regarded as abusive in that it is contrary to medical advice to abstain. Moreover, on at least three occasions since November 1996, Applicant imbibed seven mixed drinks of alcohol, an amount which would be regarded as excessive even if he did not suffer from dependency. He lacks a viable support network to assist him in recovery and shows minimal insight into what he must do to overcome his problem. His criterion G conduct continues to pose an unacceptable security risk. Accordingly, subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g. and 1.h. are resolved against him.

Applicant's illegal substance involvement raises considerable security concerns under criterion H, especially where his marijuana use continued after he was granted a Confidential security clearance. The evidence establishes Applicant smoked marijuana recreationally in 1975, about twelve to fifteen times per year from 1979 to 1987, ten times from June 1994 to December 1995 and twenty-five times from January 1996 to March 1996. (5) In addition, he ingested stimulants experimentally in 1984 or 1985 and cocaine on about a dozen occasions from 1986 to 1988. DC 1. (any drug abuse) under the drug involvement guidelines is apposite. Moreover, where he purchased all of these drugs for his personal consumption, DC 2. must likewise be considered.

Applicant's stimulant use was sufficiently remote in time and isolated in nature to apply both MCs 1. and 2. to that conduct. Applicant's cocaine abuse on the order of a dozen times went beyond experimentation, yet there has been no recurrence since 1988. The passage of time warrants mitigation of his cocaine involvement under MC 1. Applicant's marijuana abuse is contrasted by its extent and particularly by its recency. After seven years of abstinence, Applicant resumed marijuana use in June 1994 and continued his abuse to as recently as March 1996. While more than a year has passed since any involvement, there is no demonstrated intent not to use marijuana in the future. Applicant provided no assurances that his circumstances have changed since the January to March 1996 time frame to render less likely any future abuse on his part. Subparagraphs 2.a., 2.b., 2.c. and 2.f. are found against Applicant as the future use and purchase of marijuana cannot be discounted. Subparagraphs 2.d. and 2.e. are concluded in his favor as his involvement with these drugs is mitigated by the passage of time without any incidence.

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

Paragraph 2. Criterion H: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Subparagraph 2.d.: For the Applicant

Subparagraph 2.e.: For the Applicant

Subparagraph 2.f.: 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. All references in the transcript to "Antibevis" should be "Antabuse."
2. Applicant testified at the hearing that this was "one of [his] better sobrieties." (Transcript, p. 35).
3. Although he was diagnosed as suffering from marijuana dependence, Applicant testified the focus of the treatment was on his alcohol problem. (Transcript, p. 65).
4. As this Administrative Judge understands mitigating condition (MC) 1., it applies where there is no evidence of abuse but for alcohol-related incidents either at or away from work which by their isolation, remoteness, or circumstance do not manifest an alcohol problem.
5. Although Applicant was diagnosed as suffering from marijuana dependence in addition to alcohol dependence during his fourth admission to treatment facility B, a diagnosis presumably rendered on the basis of Applicant's admission to smoking half a joint a day, Applicant testified credibly that he did not smoke marijuana at that rate every day and that his problem was alcohol not illicit drugs. While Applicant abused marijuana frequently prior to his admission, the

evidence is unpersuasive that he was either physically or psychologically addicted to marijuana.