DATE: October 8, 1997

In re:

Applicant for Security Clearance

ISCR Case No. 97-0346

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR THE GOVERNMENT

Michael H. Leonard, 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 May 14, 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 June 11, 1997, Applicant responded to the allegations set forth in the SOR and requested that his case be determined on the written record in lieu of a hearing. The Government submitted its File of Relevant Material on July 15, 1997, a copy of which was forwarded to Applicant with instructions to submit material in explanation, extenuation or mitigation within thirty days of receipt. Applicant elected not to file a response and the case was assigned for resolution to Administrative Judge John Erck on September 24, 1997. On September 25, 1997, the case was transferred to the undersigned due to workload considerations.

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 29 year old laborer who has worked for a defense contractor since September 1986. He seeks to retain a confidential security clearance which was granted to him by his employer on commencing his job duties there.

Introduced to illegal drugs while still a minor in 1985, Applicant tried cocaine twice and hashish four times that year. After his initial experimentation with marijuana in January 1985, Applicant smoked that drug with increasing frequency

to where by 1988, his abuse was on the order of three joints per day. He continued to smoke marijuana at that same rate to March 1994 when his consumption decreased to one joint daily. In November 1995, Applicant returned to three joints per day, smoking on average about an ounce of marijuana per week until June 1996. Applicant purchased marijuana for his personal consumption during the 1985/1996 time frame, with his most recent consumption from November 1995 to June 1996 costing him between $100.00 to $150.00 per week. Applicant has never sold marijuana but purchased it for friends on occasion as a favor to them.

Applicant began using alcohol in 1986. The amount and frequency of his consumption increased gradually from one or two beers twice weekly to at least twelve beers five times a week. He continued drinking at this rate until 1991. On an unspecified date in May 1987, local police observed him skid to a stop at a local convenience store. Applicant was arrested for possession of alcohol by a minor and possession of a dangerous weapon after an unopened six-pack of beer and a marital arts throwing star were found in his vehicle. Applicant was fined $100.00 and given six months to one year unsupervised probation.

On March 26, 1988, a law enforcement official in state A approached Applicant who was parked with his girlfriend with the car headlights on in a local lot. Having consumed ten beers over a four to five hour period, Applicant admitted to the officer that he had been drinking and he took a field sobriety test. Placed under arrest for operating a motor vehicle under the influence (OUIL), Applicant took a breathalyser at the station. While searching his belongings, the officer found half of a marijuana cigarette. A charge of misdemeanor possession of marijuana was added. Applicant was subsequently convicted of both offenses, fined $75.00 for the OUIL and $85.00 for marijuana possession and his driving privileges in state A were revoked for ninety days. At the time, Applicant had an operator's license issued by neighboring state B.

After consuming sixteen beers and five shots of liquor over a five to six hour period on an unspecified date in April 1990, Applicant was stopped by an officer in state A and administered a breathalyser which registered .16% blood alcohol content (bac). Charged with driving while intoxicated, Applicant's driving privileges in state A were revoked for ninety days and he was placed in the pretrial alcohol education system. He was evaluated on January 14, 1991, and assigned to a ten week group alcohol education/group counseling program (program #1). After completing the course on April 8, 1991, Applicant was referred for additional outpatient counseling at another facility (program #2). Applicant received outpatient treatment in program #2 from May 8, 1991 to July 8, 1991, for a condition assessed as alcohol abuse. Applicant maintained abstinence while in program #2. Aftercare plans included abstinence and "maybe" continuation of step meetings in Alcoholics Anonymous. His prognosis for recovery was assessed as guarded. At the completion of the program, the DWI charge was dismissed.

Applicant resumed drinking thereafter at a rate which increased gradually to abusive levels (twelve beers and three shots of liquor daily). He continued drinking at this rate until 1993.

On December 7, 1991, Applicant got involved in an altercation with his supervisor at work when he attempted to leave early. Suspected of being under the influence, Applicant was administered a breathalyser at his workplace which registered .17% blood alcohol content. Applicant received a warning notice and was suspended from work for five days for violation of regulations (being intoxicated at the worksite).

After drinking twenty shots of liquor and twelve beers over an eight to ten hour period at a holiday party, Applicant was stopped en route home on December 24, 1993, for swerving/straddling the center line. Smelling of alcohol with glassy eyes and slurred speech, Applicant was administered field sobriety tests which he failed. Applicant was arrested for OUIL and failure to drive in established lane. Unable to present a urine sample after two tries, Applicant was also charged with refusal to take a chemical test and his license was suspended for six months. An administrative hearing was held on the refusal charge with the result there was insufficient proof of refusal and his license was restored. Subsequently convicted of OUIL, Applicant was sentenced to a $500.00 fine plus $200.00 probation fee and $78.00 costs, 100 hours community service, one year probation, and his driver's license was suspended for one year.

Over the next couple of years to November 1995, Applicant consumed alcohol at a significantly reduced rate of once per week. In addition to smoking three joints of marijuana per day, Applicant from November 1995 to June 1996 drank alcohol at an increased rate of at least six times per week in quantity of twelve beers and three shots per occasion.

Approximately once per week, he suffered an alcohol-related blackout.

After imbibing twelve or thirteen beers over five hours on May 16, 1996, Applicant lost control of his automobile on an interstate highway and struck the guardrails. Applicant failed field sobriety tests and was arrested for OUIL and speeding. Prior to transporting Applicant to the state police station, the officer performed a pat down for his own safety and found a small bag of marijuana in Applicant's left front pocket. Applicant was then also charged with possession of marijuana and possession of drug paraphernalia. A charge of refusal to submit to chemical test was added when Applicant refused to submit to a breathalyser at the station. On June 15, 1996, Applicant's driver's license was suspended for six months on the refusal charge. In November 1996, Applicant was convicted of OUIL for which he was fined $500.00 plus a $200.00 probation fee and $78.00 court fee, ordered to serve then days in a detention center, placed on two years probation and ordered to seek alcohol counseling. The speeding and drug charges were nolle prossed.

In June 1996, Applicant on his own sought inpatient treatment in a local rehabilitation facility (program #3). Since his insurance would only cover outpatient, Applicant was treated as an outpatient in program #3 from June 11, 1996 to July 12, 1996, for a condition diagnosed by a licensed clinical social worker as alcohol and marijuana dependence. Prior to his admission into the program, Applicant was abusing alcohol and marijuana on a daily basis. Applicant willingly attended all required psycho-educational groups where he learned about addiction and the recovery process. While he attended small group therapy daily, he did more work in his individual sessions where he learned to identify personal relapse triggers. Applicant also went to Alcoholics Anonymous (AA) meetings but only once per week. Encouraged to become more involved with AA, at discharge it was recommended to him by his therapist that he attend ninety meetings in ninety days. In formulating his aftercare recovery plan, Applicant would only commit to four AA meetings weekly. His aftercare plan included changing his friends and distancing himself from those with whom he used alcohol and marijuana in the past. His prognosis was noted as good provided he complied with his discharge objectives.

Applicant has been abstinent from alcohol and marijuana since June 1996 and has no intent to resume use of alcohol or marijuana.

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. oreover, 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. . .

(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.

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.

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

(1) any drug abuse.

(2) illegal drug possession, including. . .purchase

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, this Judge concludes that the Government has established its case with regard to criteria G and H.

While there is no evidence that Applicant had consumed any alcohol on the occasion of his ay 1987 minor in possession offense, his underage consumption otherwise engenders concern because it was in violation of applicable state laws. Moreover, by March 26, 1988, his first drunk driving offense, Applicant was clearly abusing alcohol to such an extent to be cognizable within criterion G. By sometime in the late 1980's his drinking had increased to twelve beers five times per week. After being caught operating a motor vehicle with a blood alcohol content of .16% on an occasion in April 1990, Applicant was required to attend a ten week alcohol education/group counseling program at the completion of which he was referred to another facility for further counseling. Although Applicant completed this second ten week program, during which he managed to remain abstinent, he was given a guarded prognosis on discharge which was borne out by his relapse into abusive drinking. In December 1991, he was suspended from work for five days when he was found to be intoxicated with a .17% bac on the job. Consistently drinking twelve beers and three shots of liquor per day by 1993, Applicant had developed a serious alcohol problem. During a holiday party in late December 1993, Applicant imbibed twenty shots of liquor and twelve beers. While this was over an eight to ten hour period, Applicant was inebriated when he attempted to drive home as his demeanor and driving behavior attest. Following this, his third drunk driving incident, Applicant limited his drinking to once per week. But in November 1995, without an apparent precipitant in the record, he relapsed into his previous pattern of twelve beers and three shots just about daily, suffering alcohol-related blackouts once per week. On March 16, 1996, he committed his fourth drunk driving offense. Notwithstanding his arrest for OUIL, Applicant continued to consume excessive quantities of alcohol at least six times per week until June 1996 when he sought treatment in alcohol program #3. Given the extent and recency of his abusive drinking, Applicant bears a particularly heavy burden to demonstrate reform.

In assessing the current security significance of the aforesaid conduct, this Administrative Judge must consider the Adjudicative Guidelines pertaining to alcohol consumption set forth in Enclosure 2 to the Directive. Applicant's underage possession of alcohol and his repeated drunk driving offenses qualify as alcohol-related incidents under disqualifying factor (DF) 1. DF 2. must be considered as well because he was intoxicated at the jobsite on December 7, 1991. Although the available clinical records of his treatment in program #3 reflect Applicant was dependent on both alcohol and marijuana, there is no evidence that the diagnosis was rendered by a credentialed medical professional, *i.e,* a licensed physician, licensed clinical psychologist, or board certified psychiatrist. The clinical supervisor who signed the discharge summary is a licensed clinical social worker with a doctorate degree. A licensed clinical social worker is not considered a credentialed medical professional under the Directive. Hence, this Administrative Judge is not persuaded of the Government's position that Applicant's alcohol abuse must likewise be evaluated under DF 3. (diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence). However, Applicant's pattern of abusive drinking, especially from the late 1980's to 1991 (twelve beers five times per week), from about 1992 until late 1993 (twelve beers and three shots of liquor daily) and from November 1995 to June 1996 (twelve beers and three shots of liquor at least six days a week) falls within DF 4. (habitual or binge consumption to impaired judgment).

Of the corresponding mitigating conditions (MC), the repeated nature and recency of Applicant's alcohol-related incidents preclude favorable consideration of MCs 1. or 2. To Applicant's credit, following his most recent OUIL offense of May 16, 1996, he sought treatment in an inpatient alcohol program. With his insurance coverage limited to outpatient treatment, Applicant entered a month long program consisting of individual and group therapy and AA meetings.[(1)] At discharge, Applicant intended to maintain abstinence and the Government presented no evidence of any alcohol consumption on Applicant's part since June 1996. Applicant's maintenance of an alcohol-free lifestyle is recognized as a positive change in behavior supportive of sobriety (*See* MC 3.). However, it is not enough in itself to persuade this Administrative Judge that Applicant's abusive drinking is safely behind him. Urged by his primary therapist in program #3 to attend ninety AA meetings in ninety days following his discharge, Applicant would only commit to four meetings per week. In responding to the SOR, Applicant indicated the recommendation was to attend AA a minimum of once weekly. The available medical record belies this claim. Moreover, it is not clear to what extent, if any, Applicant has attended AA since his discharge from program. It cannot be determined from the record whether Applicant has a viable support network in place to assist him in his recovery or indeed, whether he has complied with his aftercare plan and objectives.

Whether or not an applicant has reformed depends not only on demonstrated conduct over a measurable period of time that he is committed to his recovery, but also on recognition and acknowledgment of his alcohol problem. In this case, Applicant indicated to a Special Agent of the Defense Investigative Service during his interview of March 19, 1997, that

he imbibed from November 1995 to June 1996 twelve beers and three shots of alcohol at least six days per week with blackout once weekly. In his Answer, he admitted to drinking to excess only from 1989 to June 1991. This attempt to minimize his alcohol problem calls into question the extent of his insight into his alcohol problem.(2) On balance, the evidence in reform is not sufficient to overcome his very serious history of abusive drinking. Accordingly, subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i. and 1.j. are resolved against him.

With respect to Criterion H, Applicant abused marijuana from January 1985 to June 1996, to include on a daily basis since at least 1988. In addition to purchasing the illegal drug for himself during the period of his use, on occasion he bought it for friends as a favor to them. Applicant's illegal drug involvement also included experimentation with hashish and cocaine in 1985. DCs 1. and 2. under the drug involvement adjudicative guidelines are pertinent in this case. Although Applicant continued to use marijuana after he had been granted a Confidential security clearance by his employer, this Administrative Judge finds no merit to the Government's contention that DC 3. might also apply since that factor is apposite only to current drug involvement. Whereas Applicant abused marijuana daily to June 1996, his marijuana abuse is regarded as recent, but not current.

MCs 1. (drug involvement not recent) and 2. (drug involvement isolated or infrequent) work to Applicant's benefit, but only to his dated and limited abuses of cocaine and hashish. With the passage of more than ten years without any recurrence, there is seen little, if any, likelihood that Applicant will abuse either of these two drugs in the future. Subparagraphs 2.g. and 2.h. are hence concluded in his favor.

That Applicant abused marijuana daily for eight years reflects the degree to which that drug, in contrast, had become part of his lifestyle. Applicant indicates he has no intent to use marijuana in the future. For favorable consideration of MC 3., his stated intent to refrain from marijuana use in the future must be confirmed by positive action. Applicant claims abstinence since June 1996, and the Government did not present any evidence to the contrary. To his credit, Applicant received treatment in program #3, in part, for his drug abuse.(3) Yet, in responding to the SOR, Applicant attempted to downplay his recent marijuana abuse by admitting only to abuse with varying frequency, at times daily, between January 1988 and June 1991. Again, there is no evidence that Applicant has abused any marijuana since June 1996, and a finding to the contrary cannot be made on the basis of a negative assessment of his credibility. Given the extent of his past drug abuse, which is documented, it is especially important that he show adherence to his aftercare plan which he has not done. Absent compelling evidence that Applicant is actively involved in his recovery, this Administrative Judge cannot be sanguine that his drug use is safely behind him. Applicant's evidence in reform is not sufficient to overcome habitual marijuana abuse which continued, unabated, while he was in possession of a company granted Confidential clearance. Those subparagraphs which reflect marijuana involvement on Applicant's part, to wit: 2.a., 2.b., 2.c., 2.d., 2.e., 2.f. and 2.i. are therefore found against him.

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

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.: Against the Applicant

Subparagraph 2.e.: Against the Applicant

Subparagraph 2.f.: Against the Applicant

Subparagraph 2.g.: For the Applicant

Subparagraph 2.h.: For the Applicant

Subparagraph 2.i.: 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. Although Applicant was diagnosed as suffering from alcohol dependence, without clear evidence that the diagnosis was rendered by a credentialed medical professional (licensed physician, licensed clinical psychologist, or board certified psychiatrist) Applicant is not required to satisfy MC 4. While the language of MC 4. does not specify that the diagnosis of abuse or dependence be made by a credentialed medical professional, to hold otherwise would be inconsistent with the disqualifying conditions, specifically DC 3 and 5 which refer to diagnoses rendered by a credentialed medical professional.

2. His failure to admit to that which he had previously disclosed to DIS tends to undermine his credibility. Nonetheless, the Government has presented no evidence to contradict his claims that he has not used alcohol or marijuana since June 1996.

3. MC 4. requires satisfactory completion of a drug treatment program prescribed by a credentialed medical professional. In addition to the absence of any documented involvement of credentialed medical professional, the record is silent as to the degree of Applicant's compliance, if any, with his recovery plan, to include AA attendance. Satisfactory completion includes adherence to recommended aftercare.