

DATE: May 8, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0691

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

William S. Fields, Esq., Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On October 21, 1997, 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) to 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 Applicant, and recommended referral to an Administrative Judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on December 2, 1997 and elected to have his case assigned for hearing. The case was assigned to this Administrative Judge on February 23, 1998. Applicant was furnished copies of the Government's intended exhibits prior to hearing. A hearing was convened on March 25, 1998 for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of seven exhibits and no witnesses; Applicant relied on two exhibits and two witnesses (including himself). A transcript of the proceedings was received on April 8, 1998.

STATEMENT OF FACTS

Applicant is 33 years of age and has been employed by his current defense contractor (Company A) since September 1996. He does currently have a security clearance and seeks a clearance.

Summary of Allegations and Responses

Applicant is alleged to have (a) consumed alcohol, at times to excess and to the point of intoxication, experiencing blackouts, from approximately 1980 to at least April 1997, (b) had non-judicial punishment imposed in approximately 1985 under Art. 15 of the UCMJ for the offense of Disorderly Conduct, been required to perform extra duty, and consumed alcohol prior to the incident, (c) been arrested in approximately 1985 in State A and charged with DuI (the

charges were dismissed) and consumed alcohol prior to the incident, (d) received Level I alcohol treatment in approximately 1985 at a military counseling center at his military facility for his 1985 arrest, (e) been arrested in approximately 1986 in State A and charged with DuI (the charges were dismissed) and consumed alcohol prior to the incident, (f) received Level II treatment between in approximately 1986 at B Counseling Center at his military facility for his 1986 arrest, (g) received Level III treatment from April 25, 1987 to June 12, 1987 at C Hospital for a condition diagnosed at substance use disorder, (h) been arrested on March 19, 1994 in State A for DuI with a BLC of .22% at the time; pleaded guilty and was sentenced to 60 days in jail (suspended), placed on two years probation, fined \$165.00 (including costs), ordered to undergo a substance abuse assessment, and had his driver's license revoked for one month, (i) received a court-ordered assessment on April 8, 1994 at B Counseling Center and diagnosed with alcohol dependence in full relapse, and recommended that he participate in Level III inpatient treatment and aftercare with the military, and (j) received Level III aftercare treatment from April 8, 1994 to July 26, 1995 at B Counseling Center.

Additionally, Applicant is alleged to have (i) been arrested on October 10, 1996 in State A for DuI, pleaded guilty and sentenced to one year in prison (suspended), seven days in jail, four years of supervised probation (and ordered not to consume alcohol while on supervised probation), fined \$500.00 including costs, ordered to undergo a substance abuse assessment, and had his driver's license revoked for four years, (ii) received a court-ordered assessment on November 26, 1996 and December 3, 1996 at a CD Evaluation, which determined that he had a substance abuse handicap, was in need of treatment and recommended for assignment to a 40 hour treatment program, (iii) received court ordered treatment from January 30, 1997 to March 26, 1997 at F Counseling in State B for a condition diagnosed as alcohol abuse in remission, required to abstain from consuming alcohol during the treatment program and failed to comply with the requirements, and (iv) continued to consume alcohol notwithstanding his treatment.

For his response to the SOR, Applicant admits most of the allegations set forth therein. He denies experiencing/having blackouts from 1980 to April 1997 and receiving non-judicial punishment for drunk and disorderly conduct. He denies receiving aftercare treatment between April 8, 1994 and July 26, 1995, claiming his aftercare consisted of weekly liaison with his command drug and alcohol advisor for a period of 180 days, supplemented by 3 AA meetings per week, random urinalysis screening (minimum of 4 times per month for 12 months, and work on problems documented in the resident treatment record (no prescribed antabuse). Also, he denies the sentencing disposition incidental to his arrest of October 10, 1996 for DuI; he claims the issuance of a December 6, 1996 order modifying and correcting the judgment.

Relevant and Material Factual Findings

The allegations in the SOR that were admitted by applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant was introduced to alcohol at the age of 17. Once he joined the Marine Corps in March 1984, his drinking habits picked up. From an established drinking pattern of three to four beers a week (mostly on weekends) he maintained before joining the Marines, he increased his drinking (mostly on Fridays and Saturdays) to six to twelve beers a week between 1984 and 1985. By 1985, he was consuming two to three beers a day, and he maintained this drinking pattern to February 1987. After a respite from drinking between February 1987 and February 1988, he returned to drinking again, progressively, to two to three beers almost daily during the week, increasing to six to twelve on Fridays and Saturdays.

While on duty in the Persian Gulf between April 1990 and April 1991, Applicant drank considerably less: Only two beers every 45 days (the maximum permitted). But Applicant returned to serious drinking once he returned from the Gulf in April 1991 (*i.e.*, three to six beers daily during the week and six to twelve beers on Fridays and Saturdays). He maintained this level of drinking from April 1991 to March 1994.

Applicant quit drinking for only a month in March 1994 before relapsing to three to six beers daily, interspersed by six to twelve beers on Fridays and Saturdays. Once again, he quit drinking in 1995, only to return to drinking: About one to three beers a day and about six beers on Fridays to October 1996. Suspending his drinking for a one-month spell in November 1996, Applicant settled on a regimen of two to three beers twice a week between December 1996 and February 1998 before quitting altogether. While Applicant does not consider himself an alcoholic, his status remains subject to conflicting medical accounts which cannot be fully resolved in his favor at this time.

Alcohol consumption adversely affected his duty assignments in the Marine Corps. On occasions following his convictions on DuI charges and ensuing counseling, Applicant's scheduled promotions were suspended. He assures his duty assignments were never affected by his drinking, while acknowledging experiencing blackouts too numerous to count or remember. His alcohol intake has caused him health problems in the past (mostly in the 1987 time frame when his alcohol consumption was the heaviest): Tremors and shakes, rapid heart beat, feeling overly hot and sweaty and becoming sick following bouts of drinking.

Except for fines he has been required to pay in connection with alcohol-related incidents, Applicant's alcohol consumption has not wrought financial or domestic problems for him that are in any way visible in the record.

Alcohol was the source of numerous alcohol-related incidents involving Applicant over a twelve year period spanning 1985 and October 1996. Beginning with an alcohol-related disorderly conduct incident he was involved in (in 1985) while in the Marine Corps (for which he was awarded NJP and required to perform extra duty), Applicant was charged with a total of five alcohol-related incidents between 1985 and October 1996. Only with respect to his 1995 DuI arrest in State A were the charges dismissed. Each of the other four incidents resulted in either NJP or court-ordered sentencing, fines and prescribed treatment, each of which is outlined in the SOR and admitted to by Applicant, save for the disposition following his October 1996 DuI arrest. After initially sentencing Applicant to seven days in jail, the State A court altered Applicant's sentence re: his October 1996 arrest and subsequent conviction from seven days in jail to just two days in jail and fourteen days of house arrest.

Applicant is credited with receiving and completing command ordered alcohol treatment at his Marine facility between 1985 and 1995: Level I alcohol treatment in 1985 at B Counseling Center for, Level II treatment in 1986 at B Counseling Center, Level III treatment in 1987 at C Hospital for diagnosed substance use disorder, and Level III aftercare treatment from April 8, 1994 to July 26, 1995 at B Counseling Center for diagnosed alcohol dependence in full relapse by an apparently credentialed medical professional (*see ex. 6*). But while he attended F Center for the prescribed 40 hours between January 30 and March 26, 1997 (as he was court-ordered to do by the sentencing court pertaining to his October 1996 arrest and ensuing conviction) and is credited with completing the prescribed treatment regimen, he continued to drink over the duration of the program in violation of the program's abstinence requirements (*compare ex. 2 with R.T., at 48*). His assigned prognosis by his F Center treatment provider was not favorable for recovery based on Applicant's past experience with alcohol. While considered capable of maintaining sobriety on the strength of "sheer stubbornness," he was credited by his provider with essentially no achievements in eliminating "the causative factors that resulted in his alcohol abuse and subsequent dependence" (*ex. 5*).

Applicant continued to drink at light levels (generally two to three beers twice a week) following his October 1996 DuI incident (save for a brief one month respite in November 1996) and only ceased drinking in early February 1998. He has attended AA meetings off and on since 1986, regularly for awhile in 1986 (receiving a 90-day chip for observed abstinence) and during the 1995-1996 period, but irregularly since his separation from the Marine Corp and nothing of note since February 1998. He has no sponsor or step work credit with his current AA chapter (R.T., at 41-43) and no plans to obtain or initiate either. Furthermore, Applicant's driving privileges remain suspended under the terms set by the State A court who entered judgment on Applicant's 1996 DuI charges. Comfortable with his recent decision to quit drinking, he ensures he has no intentions of returning to drinking at this time (R.T., at 46).

Applicant is highly regarded by his current supervisors and colleagues as a skilled jet mechanic instructor. Before his separation from the Marines in 1996 (*see ex. A*), he was respected by his wing supervisor as a reliable and trustworthy jet mechanic who never exhibited any tangible signs of being under the influence of alcohol while on the job.

POLICIES

Both F.3 of the Directive's Change 2 and the Adjudication Guidelines ("Guidelines") of the Change 3 amendments to the Directive (effective January 1, 1996) list adjudicative guidelines for determining eligibility for access to classified information. In addition to the relevant adjudicative guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in the preamble of the Guidelines: Nature, extent and seriousness of the conduct, the circumstances surrounding the conduct, the frequency and recency of the conduct, the individual's age and maturity at the time of the conduct, the voluntariness of the participation, the presence or absence of

rehabilitation, other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation or duress and the likelihood of recurrence.

Viewing the issues raised and evidence as a whole, the following adjudicative guidelines are pertinent herein:

Alcohol Consumption

Disqualifying Conditions

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.
5. Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.

Mitigating Conditions

3. Positive changes in behavior supportive of sobriety.

Burdens of Proof

By dint of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's suitability for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Put another way, the Judge cannot draw inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controversial fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a nexus to the applicant's inability to obtain or maintain a security clearance. The required showing of nexus, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of accessible risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant comes to these proceedings with a history of regular alcohol consumption, marked by a number of alcohol-related incidents over a 12-year period and still recent (*viz.*, 1994) diagnosis of alcohol dependence in full relapse. Applicant's confrontations with law enforcement authorities resulted not only in imposed jail time (mostly suspended), probation and fines, but ordered treatment regimens by the courts and his Marine Corp command. While Applicant was credited with successfully completing his earlier treatment programs, they were not enough to prevent relapses, including one serious relapse in March 1994 for which Applicant was diagnosed with alcohol dependence in full relapse.

Applicant's problems with alcohol draw the Government's justifiable security concerns. Inadvertent disclosure risks

associated with alcohol abuse transcend the work place environment and expose the individual to the risk of compromising classified information both on and off the job through alcohol-induced impaired judgment. *See* ISCR Case No. 96-0869 (September 11, 1997). Application of several of the Adjudicative Guidelines (for alcohol consumption) is appropriate given Applicant's long history of problem drinking covered in this record: DC 1 (alcohol-related incidents away from work), DC 3 (diagnosis by credentialed medical professional of alcohol abuse or dependence), DC 4 (habitual consumption of alcohol to the point of impaired judgment) and DC 5 (consumption of alcohol subsequent to diagnosis of alcoholism and following alcohol rehabilitation program). Based on the initial documentation received, Government's security concerns were reasonable and fully sufficient to enable it to meet its opening burden.

In his defense, Applicant mounted persistent restorative efforts following disposition of his numerous alcohol-related incidents, enough to warrant his benefiting from one of the mitigation conditions of the Adjudicative Guidelines: MC 3 (positive changes in behavior). To his credit, he exhibits increased knowledge and understanding about the risks of excessive alcohol consumption and commits one again to a charted life-style that is free of alcohol. His most recent treatment records credit him with taking good advantage of the treatment therapies provided him, and he has been able to make use of AA sessions in recent months, with some tangible success.

Applicant's latest commitments to abstinence must be balanced, though, against a considerable record of alcohol-related incidents, treatment efforts and short periods of abstinence, only to be followed by relapses. Applicant's last DuI incident occurred just 2 months after his Marine discharge. Failing to comply with the abstinence requirements imposed by his treatment team during his outpatient treatment in 1997, Applicant can claim only mixed results from his most recent treatment efforts (despite his being credited with successful completion by his F Center treatment facility). Faced with both a serious history of escalating alcohol abuse and dependence and prognosis difficulties, a period of sustained abstinence assumed vital importance to his recovery. Applicant either would not or could not meet these abstinence recommendations of his provider, and only recently turned to sobriety: Just six weeks ago to be more precise. While his recent treatment efforts and new commitments to sobriety are commendable for sure, and to be encouraged, his time in recovery is still too short to absolve him of all reasonable risks of recurrence. Summarized, the record reflects just 18 months of elapsed time since Applicant's last alcohol-related incident, barely 12 months since completion of his F Center treatment program, and a scant six weeks since his self-imposed abstinence.

Taking into account Applicant's history of alcohol abuse, corresponding multiple treatment efforts (each followed by a return to abusive drinking after short periods of sobriety, save for his most recent treatment efforts), mostly negative prognosis by his most recent treatment provider, and continued drinking in the face of poor diagnoses and prognosis, more time is needed before safe predictions can be made that Applicant no longer poses a risk to recurrent drinking abuses. Under the circumstances of the facts developed in this record, Applicant does not carry his evidentiary burden. Accordingly, sub-paragraphs 1.a through 1.c, 1.e, 1.h and 1.i, and 1.k through 1.n are concluded unfavorable to Applicant. Applicant is entitled to favorable conclusions with respect to sub-paragraphs 1.d, 1.f and 1.g, and 1.j.

In reaching my decision, I have considered the evidence as a whole, including each of the factors considered in F.3 of the Directive and the Change 3 Guidelines in the Directive's preamble.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS listed above, this Administrative Judge makes the following FORMAL FINDINGS:

CRITERION G: AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: FOR APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

Sub-para. 1.f: FOR APPLICANT

Sub-para. 1.g: FOR APPLICANT

Sub-para. 1.h: AGAINST APPLICANT

Sub-para. 1.i: AGAINST APPLICANT

Sub-para. 1.j: FOR APPLICANT

Sub-para. 1.k: AGAINST APPLICANT

Sub-para. 1.l: AGAINST APPLICANT

Sub-para. 1.m: AGAINST APPLICANT

Sub-para. 1.n: AGAINST 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.

Roger C. Wesley

Administrative Judge