DATE: April 20, 1998

In Re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 97-0749

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

William S. Fields, Esquire, Department Counsel

FOR APPLICANT

Mark A. Bradley, Esquire

STATEMENT OF THE CASE

On 12 November 1997, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding[(1)] that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 2 December 1997, Applicant answered the SOR and requested a hearing. DOHA assigned the case to me on 2 February 1998; I received the case on 3 February 1998. On 5 February 1998, I set the case and issued a notice of hearing for 26 February 1998. On 25 February 1998, I reset the case for 4 March 1998, because the scheduled hearing room had become unavailable.

At the hearing, the Government presented three exhibits -- one and two admitted without objection; three admitted over objection--and no witnesses; Applicant presented four exhibits--admitted without objection--and the testimony of three witnesses, including himself. I received the transcript on 20 March 1998.

FINDINGS OF FACT

Applicant admitted the factual allegations of the SOR, except that he denied being required to attend alcohol counseling and denied continuing to consume alcohol; accordingly, I incorporate Applicant's admissions as findings of fact.

Applicant -- a 24-year old employee of a defense contractor -- seeks a secret security clearance.

The allegations of the SOR revolve around Applicant's alleged history of alcohol abuse, as recorded in alcohol treatment records, and his treatment for alcohol abuse from 9 June 1997 to 14 August 1997 (G.E. 3). Applicant began to drink during his junior year in high school--when he was seventeen; he drank three times over his junior year (Tr. 51). During his college years, his drinking varied. He usually drank on weekends; some weekends he drank nothing, some weekends he had one or two beers, on the rare weekend he drank 6-8 beers. He was never cited for abusing alcohol while in college, or otherwise disciplined for any misconduct (Tr. 52). On 30 November 1996, Applicant was cited for having an open container of beer at a football game.[(2)] Applicant and a friend bought a beer at a restaurant with an outside patio;

finding no seats on the patio, Applicant and his friend sat down on the curb to drink their beers. In doing so, they left the premises of the restaurant and were in technical violation of local ordinances prohibiting having an open container of alcohol in public. Because it was game day, the local police had a policy of strict enforcement and would not issue Applicant and his friend warning notices. Neither Applicant nor his friend were being unruly or disorderly (Tr. 53-54).[(3)]

Applicant graduated from college in March 1997, and went to work for his employer. On 27 May 1997, he had been drinking at a concert with some friends. On his way home, he ran a red light,

was stopped by the police, and cited for driving while intoxicated (DWI). His blood alcohol level was .19%.

At a preliminary hearing on the charges, Applicant learned about the pretrial diversion program that Applicant was eligible for. On the advice of his counsel, Applicant entered a local treatment program for evaluation. Applicant was recommended for, and entered into, an early intervention program. Applicant attended the program from 9 June 1997 to 14 August 1997; he was compliant with treatment recommendations, and discharged as having successfully completed the program.[(4)] On 5 September 1997, the DWI charges were nolle prosequi.

Although while in treatment, Applicant did not admit to being an alcoholic (and does not admit to being one now), he did gain insight into the long term consequences of continued alcohol abuse. He did consume some alcohol in early July 1997 while in treatment (which he disclosed to the program at the time), but has not consumed alcohol since. He does not attend AA, although he did so a few times while in treatment.[(5)] His counselor and the treating physician consider Applicant's participation in the treatment program to have been excellent.[(6)]

Applicant is an excellent employee, who demonstrates no indications of alcohol abuse on the job. Applicant is extremely physically active. He works fifty-five hours a week and trains to run marathons.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc*.

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

ALCOHOL CONSUMPTION (CRITERION G)

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. . .

(3) diagnosis by a credentialed medical professional of alcohol abuse. . .;[(7)]

Conditions that could mitigate security concerns include:

(1) the alcohol related incidents do not indicate a pattern;[(8)]

(3) positive changes in behavior supportive of sobriety;

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to Applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where 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 or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the 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."

CONCLUSIONS

The Government has established its case under criterion G; however, the alcohol abuse is mitigated. The record reflects that Applicant abused alcohol on some occasions while in college, and on at least one occasion in May 1997 when he had his DWI. However, Applicant took that DWI as a wake-up call to examine his alcohol consumption. He entered and completed an early intervention program, and stopped drinking alcohol.[(9)] Nothing in his treatment program suggests that he is alcohol dependent or suffers from alcohol abuse as those terms are used in the Directive. The DWI is an isolated incident and Applicant has made positive changes in his life supportive of sobriety. I conclude that it is unlikely that Applicant will abuse alcohol in the future. I find criterion G. for Applicant.

FORMAL FINDINGS

Paragraph 1. Criterion G: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: 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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996 (Directive).

2. For which he paid a fine of $70.00.

3. I conclude that this incident is not an alcohol-related incident within the contemplation of the Directive provisions pertaining to conditions which could raise a security concern. While ignorance of the law is no excuse for their conduct, neither did their consumption of alcohol raise any security concern. There is no indication that Applicant was under the

influence of alcohol; Applicant's conduct was not the product of any poor judgment or unreliability on his part. Further, there is no evidence to indicate this incident is part of a pattern of having open containers in public, or being intoxicated or otherwise under the influence of alcohol in public.

4. Intake records indicated a provisional diagnosis of "alcohol abuse, rule out dependence." The discharge diagnosis was "alcohol abuse," Applicant having demonstrated no dependence on alcohol. Significantly, the 3 July 1997 psychiatric evaluation noted that Applicant demonstrated "no significant layer of denial" of his alcohol abuse.

5. His counselor testified (Tr. 26) that the recommendation for AA was made principally so Applicant would be aware of the help that was available in the community.

6. On 28 February 1998, the treating physician noted (A.E. C): Applicant "does not meet the criteria for any significant alcohol abuse or dependence disorder," and went on to say that "we do not find evidence for any significant problem with alcohol on an ongoing basis."

7. Although Item 5 does not clearly establish the credentials of the treating professional, I consider this factor as fairly raised by the evidence.

8. The only established alcohol incident occurred over 14 years ago, and was not alleged in the SOR; however, even if the incident is properly considered, one incident cannot indicate a pattern and a 14-year old incident is certainly remote.

9. I have considered the fact that Applicant does not have a sponsor or attend AA meetings, both recommendations made by his counselors. I have also considered the fact that he has only been abstinent since July 1997. However, while Applicant was diagnosed as suffering from alcohol abuse, the evidence supports my conclusion that the abuse was minimal, and has been addressed by Applicant's changes in behavior. His counselor admits that the recommendation for AA was for information purposes and not an indication that Applicant necessarily needed to adopt a 12-step program to remain abstinent.