

DATE: April 24, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0750

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Michael H. Leonard, Esq., Department Counsel

FOR APPLICANT

Vincent E. Phelan, Esq.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 3), issued a Statement of Reasons (SOR), dated November 12, 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on excessive alcohol consumption with one alcohol-related incident (criterion G).

On December 9, 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 January 22, 1998, and on January 28, 1998, a hearing was scheduled for February 24, 1998 . At the hearing held as scheduled, five Government exhibits and one Applicant exhibits were admitted into evidence. Testimony was taken from the Applicant. A transcript of the hearing was received by this office on April 17, 1998. [\(1\)](#)

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 45 year old security guard who has worked for his current employer, a defense contractor, since March 1980. He seeks to retain a Secret security clearance which he has held since June 1980 in connection with that employ.

Applicant first consumed alcohol in about 1970 when he was still in high school. He drank in quantity of one or two beers or mixed drinks at a rate varying from weekly to monthly. Following graduation, Applicant enlisted in the service.

During his tenure in the military from July 1972 to June 1975, Applicant imbibed alcohol on occasional long weekends in the non-commissioned officer's club. At times, he and other servicemen went to a professional football game where Applicant would drink a few beers. Applicant held a special access security clearance without adverse incident while in the military and attained the rank of E-5 sergeant by the time of his honorable discharge in June 1975.

Applicant thereafter pursued higher education, graduating from college in December 1978. For the next year, he worked as a institution protection officer until he began working for his present employer in March 1980. Applicant's pattern of consumption for the first ten years of this employ consisted of a couple of beers and a mixed drink or one or two mixed drinks approximately twice a month in social settings and a couple of beers twice a week at home. From 1990 to 1995, he imbibed on average a couple of beers once a week at home.

In early 1996, Applicant and his spouse started discussing building a new residence on land given to them by Applicant's parents. With Applicant resentful of the fact that her family was not providing assistance equivalent to his parents, the housing issue led to marital discord and an increase in Applicant's drinking to two or three beers or mixed drinks at home in the evening two or three times weekly.

In an effort to appease his spouse who was expressing concerns over his drinking, Applicant during the May/June 1996 time frame attended an alcohol education class at a local alcohol treatment center (hereinafter "treatment center"). After he completed the class, Applicant elected not to participate in the men's early recovery group but he went to Alcoholics Anonymous (AA) meetings a couple times per week. His participation in AA gradually declined over the fall of 1996 to where he stopped attending altogether, and over the December holiday season, he resumed drinking in his previous pattern. From about February/March 1997 to early ay 1997, he became intoxicated once or twice a month after imbibing two or three beers and a couple of mixed drinks.

After consuming two or three vodka and orange juice drinks to intoxication at his residence on an evening in May 1997, Applicant argued with his spouse about the construction of the new home. Applicant's oldest son, then age 13, became involved in the argument. When the son did not desist from challenging his father's argumentative behavior, Applicant struck his son on the left side of the face. Applicant's son summoned the police and Applicant was arrested for domestic assault and battery. Applicant spent three nights in jail before his arraignment. At his arraignment, Applicant learned that his spouse had taken out a restraining order against him because of the incident and he moved in with his parents where he continues to reside. His spouse eventually had the restraining order withdrawn in mid July 1997 so that Applicant could remove his belongings from the family residence.

In court in early July 1997, Applicant filed a motion to dismiss with the agreement of his spouse who submitted an accord and satisfaction requesting that he be discharged from the criminal complaint. Applicant was adjudged to have admitted to sufficient facts and the case was continued without a guilty finding for one year on payment of \$35.00 to the victim witness fund and completion of an alcohol education class at the treatment center he had attended in 1996. Currently on probation, Applicant initially reported once a week. After the quarterly evaluation, required contact with his probation officer was reduced to once a month.

Following the incident, Applicant continued to consume alcohol at the rate of two or three drinks over the weekends until July 30 or 31, 1997, when he drank to intoxication on the occasion of his spouse and sons moving into their newly constructed home. On August 1, 1997, he was interviewed by a Special Agent of the Defense Security Service about his alcohol use. Applicant reported to the DSS Agent that he had stopped using alcohol after his court appearance and that he was attending AA three to four times weekly.⁽²⁾

Applicant completed the court-mandated twenty session alcohol program at the treatment center. Applicant continued in the men's early recovery support group, attending at his own expense once weekly meetings from September 24, 1997 to at least February 11, 1998.⁽³⁾

Applicant went back to AA in August 1997, attending open discussion meetings on the order of three times per week initially and more recently twice per week. He has never spoken at a meeting and has not affiliated himself with a home group. Applicant was given the telephone number of a person in AA to call if he needs assistance in maintaining sobriety. He considers this fellow AA attendee his sponsor. While Applicant talks with this individual at meetings,

Applicant has not called him. Applicant is currently working the first three steps of the AA twelve step program.

Applicant considers himself an alcoholic because alcohol has negatively impacted his family relationships. (4) Abstinent from July 31, 1997, he does not intend to consume alcohol in the future. He has attended a few retirement parties since where alcohol was served. Applicant drank ginger ale on those occasions. His co-workers are aware he is no longer drinking.

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:

(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 as amended 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 of the Applicant, this Judge concludes the following with respect to criterion G:

Unquestionably, Applicant allowed alcohol to negatively impact his judgment and reliability when, in an intoxicated state, he struck his thirteen year old son in the face in May 1997. Furthermore, Applicant's alcohol use, especially during the first four to five months of 1996 and from December 1996 to July 31, 1997, further strained a marriage already in difficulty. During the spring of 1997, Applicant consumed to intoxication on a once to twice monthly basis. While the evidence of abusive drinking is limited, it raises security concerns under criterion G because of its recency. Those to whom classified information is entrusted must be relied on to safeguard this material both during business and non-business hours. Ingestion of alcohol to the point of impaired judgment is incompatible with this duty due to the obvious potential for intentional or inadvertent disclosure when one is under the influence. The nexus between Applicant's abusive use of alcohol and his fitness for access to classified information is not attenuated, moreover, by the fact his drinking has not negatively impacted his work performance.

In assessing the current security significance of Applicant's criterion G conduct, this Administrative Judge must consider the adjudicative guidelines set forth in Enclosure 2 to the Directive. Under the policy pertaining to alcohol consumption, disqualifying condition (DC) 1. is not applicable despite the May 1997 physical abuse of his son being the type of incident contemplated under DC 1. This is the only alcohol-related incident of record and the disqualifying condition on its face refers to multiple incidents. However, there is sufficient evidence of consumption to impairment on the occasion in ay 1997 to where DC 4., binge consumption to the point of impaired judgment, must be considered. Applicant admits to consuming two or three vodka drinks prior to the incident. While it has not been conclusively established that Applicant was "highly intoxicated" as reflected in the police report, he admits to being intoxicated and clearly, his judgment was impaired by alcohol. His consumption to intoxication on the order of once to twice per month from February/March 1997 until the May 1997 incident and again on July 30 or 31, 1997, after he had completed an alcohol education program in 1996, likewise falls within DC 4.⁽⁵⁾ Although Applicant indicated on August 1, 1997, to a DSS Special Agent that he considers himself an alcoholic, it was based on his lay impression and not on any formal diagnosis rendered by a credentialed medical professional. DCs 3. or 5. are therefore not pertinent.

Applicant proffers in mitigation his subsequent completion of a twenty session program and continuing attendance at his own expense in a weekly men's early recovery support group. While the positive impact of the recent twenty session alcohol program is undermined somewhat by the fact his participation was under court mandate, his ongoing involvement in the men's recovery group beyond the twelve sessions recommended as well as his voluntary maintenance of an alcohol-free lifestyle since July 31, 1997, are favorable changes in behavior supportive of sobriety. In addition to this early recovery support group, Applicant has continued to attend AA at a frequency of twice a week. While he has not spoken at any meetings and does not rely on a sponsor, his obviously less than complete commitment to the AA program engenders little security concern because of his ongoing rehabilitation effort in the men's recovery support group and the limited extent of his abusive drinking. A favorable outcome is warranted because of his efforts in rehabilitation, notwithstanding his current probationary status. Subparagraphs 1.a., 1.b., 1.c., and 1.d. are therefore resolved for Applicant.

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

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. The inordinate delay in receipt of the hearing transcript was due to factors outside of DOHA's control.
2. There is no indication in the record that Applicant informed the Special Agent during his August 1, 1997 interview that he had consumed alcohol to intoxication on July 30 or 31, 1997. While his credibility is undermined by his failure to disclose this relevant and material information to the Agent, the Government presented no evidence to challenge Applicant's claim that he has not consumed alcohol since about July 31, 1997.
3. Applicant was still participating in the program as of the hearing, having continued of his own volition beyond the twelve sessions recommended. Transcript, p. 91.
4. As conceded by Department Counsel in his opening, the Government did not present any proof of the diagnosis of alcohol dependency alleged in subparagraph 1. d. Applicant's testimony that he considers himself an alcoholic because alcohol has impacted his family relationship is not sufficient to establish the diagnosis. Applicant testified he was not informed of any formal diagnosis by treating personnel.
5. Binge drinking is not defined in the Directive. The predominant definition of the noun binge is "a drunken revel" and the term is commonly used in reference to drinking heavily. Consumption to the point of intoxication is regarded by this Administrative Judge as excessive drinking.