



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
-----)	ISCR Case No. 07-04389
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O'Connell, Esquire, Department Counsel
For Applicant: R. Matthew Rickman, Esquire

April 10, 2008

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted his security clearance application (e-QIP) on April 6, 2006. On August 15, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guidelines G and J. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On October 1, 2007, Applicant answered the SOR in writing and requested a hearing before an Administrative Judge. On November 28, 2007, previously assigned Department Counsel indicated the government was prepared to proceed. The case was assigned to me on December 6, 2007, and on January 17, 2008, I scheduled a hearing for February 27, 2008.

I convened the hearing on February 27, 2008, as scheduled. Nine government exhibits (Ex. 1-9) and six Applicant exhibits (Ex. A-F) were admitted without any objections, and Applicant testified, as reflected in a transcript (Tr.) received on March 7, 2008. For the reasons discussed below, eligibility for access to classified information is denied.

Findings of Fact

DOHA alleged under Guideline G, alcohol consumption, that Applicant is on probation until May 2008 following his arrest for operating under the influence of alcohol (OUI) in May 2007 (SOR ¶ 1.a); was medically diagnosed in August 1991 as an alcohol abuser and/or alcohol dependent (SOR ¶ 1.b); has since consumed alcohol through May 2007 to excess with periods of abstinence (SOR ¶ 1.c); received inpatient alcohol treatment in spring 2004 at his employer's recommendation (SOR ¶ 1.d); and received voluntary alcohol treatment at the same facility in October 2004 (SOR ¶ 1.e), twice in 2005 (SOR ¶ 1.f), in September 2006, and in March 2007 (SOR ¶ 1.g) after relapsing. Applicant's arrest for OUI in May 2007 was also alleged under Guideline J (SOR ¶ 2.a).

In his Answer, Applicant admitted he turned to alcohol to cope with marital problems which led to his inpatient treatment in August 1991, and that over the next 16 years he continued to battle problems with alcohol. He denied that the abuse was continuous over that time or that all his relapses were to excess, and averred that he maintained long periods of sobriety. Applicant proffered in mitigation that he always acknowledged his problem, sought treatment, maintained a clearance for 35 years without any violations, and turned himself in to the police in May 2007 by parking at the station and explaining he should not be driving. After consideration of the evidence of record, I make the following findings of fact.

Applicant is a 58-year-old principal software engineer who has worked for his employer, a defense contractor, since November 1995 (Ex. 1, Tr. 31). He seeks to retain the secret-level security clearance that he has held for about 35 years, excepting a period of unemployment in 1994/95 (Ex. 1, Tr. 47).

Applicant began drinking in about 1971 during his sophomore year in college (Ex. 7). After he graduated in 1972, he worked as an electrical engineer for the U.S. Navy at a naval avionics facility for over five years (Tr. 33-34). He held a secret-level clearance for his duties (Answer, Ex. 1, Tr. 34). In 1974, he married his first wife, who was a medical student studying to be a psychiatrist, and pursued his master's degree in electrical engineering, which was awarded to him in May 1978. His use of alcohol did not compromise his functioning during this time (Ex. 1, Ex. 7, Tr. 31-33).

In 1978, Applicant began working for a research laboratory developing algorithms and conducting evaluation studies of ballistic missile guidance systems (Answer, Tr. 35-37). He held a secret clearance for his duties (Tr. 37-38). He drank responsibly until about 1985. Over the next five years, his consumption levels gradually increased and as of the late 1980s, his spouse began to urge him to seek treatment. Applicant saw a

physician, but did not follow through with recommended alcohol treatment. By early 1991, Applicant was drinking four beers plus a liter of wine daily, which did not help his already troubled marriage (Ex. 5, Ex. 7). He drank to intoxication often on Saturday nights (Tr. 69).

After his spouse suffered a miscarriage (Tr. 49), Applicant suffered depression that led him to consult with the chief physician of a general hospital's clinical psychopharmacology unit in June 1991. Applicant was placed on an antidepressant and referred to a physician specializing in substance abuse. As of his substance abuse evaluation on August 1, 1991, Applicant had experienced blackouts, withdrawal tremors, problems abstaining, and drinking on occasion up to three liters of wine on a weekend day while sitting isolated in his room watching television (Ex. 7). Applicant denies he reported to work intoxicated (Tr. 71), and the government presented no evidence to the contrary. Applicant was told unequivocally by the evaluating physician that he needed inpatient alcohol treatment (Ex. 7, Tr. 72).

Hoping it would improve his relationship with his spouse (she gave him an ultimatum), Applicant voluntarily admitted himself for inpatient psychiatric and alcohol treatment in a mental health treatment facility (hospital X) on August 7, 1991 (Ex. 7, Tr. 49-50). Applicant smelled of alcohol during his admission interview. Applicant was successfully detoxified from alcohol and continued on his antidepressant. At discharge on August 23, 1991, Applicant was diagnosed with alcohol dependence, condition much improved, and with moderate depression by history, condition unchanged. Outpatient care was recommended with some couples therapy (Ex. 7).

Applicant continued in once weekly outpatient counseling for his substance abuse with a psychiatrist from August 1991 to September 1992, and then with a clinical psychologist at a different facility for the next two years. In addition, he was monitored by his physician pharmacologist every three to four months (Ex. 4). Applicant maintained abstinence until April 1993 (Tr. 74). After he and his spouse separated in mid-April 1993, Applicant became active in a social organization involved in outdoor activities. He began drinking a beer at club outings (Tr. 75). His work performance for July 1992 through June 1993 declined relative to his efficiency during the prior performance period (Ex. 8). He was laid off from his long time employment effective July 6, 1994. He was selected for layoff during a company downsizing because his work habits had "substantially deteriorated" and he could not be counted on to put in a full work day. His attendance was rated as poor (Ex. 9). Applicant was depressed over the breakup of his marriage (Tr. 82).

Since he no longer had health insurance, Applicant switched his counseling from the psychologist to a licensed clinical social worker (LCSW) (Ex. 6, Tr. 52). From late August 1994 to at least June 1996, Applicant participated in weekly hour-long individual counseling sessions with the LCSW to deal with diagnosed alcohol abuse, and issues surrounding his depression, initial unemployment, his divorce from his first wife in June 1995, and his social habits. Although he had been told by the LCSW on occasion that he needed to stop drinking (Tr. 86), Applicant reported to the clinician that he had

consumed at times a few beers, which added to his depression (Ex. 6). In July 1996, Applicant told a government investigator that he was abstinent from August 1991 to June 1993, and consumed two drinks between July 1993 and December 1994 (Ex. 5). At his hearing, he acknowledged that he could have been drinking “a couple of beers a day” following his job layoff (Tr. 83).

In January 1995, Applicant began drinking in a pattern of two or three beers almost daily, with several periods of abstinence lasting for as little as one or two days up to a month at one point (Ex. 5).¹ In April 1995, after being unemployed since July 1994, Applicant went to work as a contract employee for the research laboratory (Tr. 39). His secret clearance was reinstated. In July 1995, Applicant’s father died unexpectedly. Applicant became intoxicated following his father’s funeral. He drank ten beers in an eight-hour period (Ex. 5, Tr. 51, 76).

In November 1995, Applicant started with his present employer. He continued to drink at some of the outdoor club’s events (Tr. 87). In application for a secret-level security clearance for his new duties involving the upgrade of a missile system (Tr. 41), Applicant executed a National Agency Questionnaire (DD Form 398-2) on December 8, 1995. Applicant responded affirmatively to question 20.d concerning whether his use of alcoholic beverages had resulted in alcohol-related treatment or counseling. He indicated that marital problems and excessive drinking on the weekends led him to inpatient treatment for two weeks in August 1991 and that with the help of ongoing therapy and Alcoholics Anonymous (AA) meetings, the problem had not recurred despite his divorce, unemployment, and the recent unexpected death of his father (Ex. 4). Applicant was granted his secret-level clearance (Tr. 46-47).

On Christmas Day 1995, Applicant found himself alone after plans to get together with a female friend fell through. He consumed ten beers to intoxication in his residence (Ex. 5, Tr. 76). Applicant was still under the care of the LCSW at the time (Ex. 5). On July 17, 1996, Applicant was interviewed by a government investigator about his alcohol consumption. Applicant disclosed that his drinking increased from 1985 to 1991, when his daily consumption of four beers and a liter of wine led him to seek treatment in 1991. While continuing with outpatient counseling and periodic AA meetings since his discharge, he had been drinking since January 1995, “two or three beers on an almost daily basis” with several periods of abstinence lasting one or two days or for a period of up to one month. He claimed to “have done this self-inventory to confirm [he] was not having any problems with [his] use of intoxicants” and that it was with the approval of his counselor, an LCSW. Applicant expressed his intent to continue to using intoxicants at that rate in the future. He attributed his increased usage to problems in his marriage. Applicant acknowledged he had consumed alcohol to intoxication on his father’s death in July 1995, and on December 25, 1995 (Ex. 5).

¹When asked to clarify the frequency of his drinking from January 1995 to July 1996, Applicant testified he drank occasionally, once a month, in social situations (Tr. 77).

In 1998 or 1999, Applicant's employer moved the missile work Applicant was engaged in to a facility in another area of the country. Applicant was offered a year's salary to relocate, but he instead chose to remain in his present locale. He transferred to another division within the company where his work has since focused on satellite communications systems for the U.S. military (Tr. 42-45). As of 2000, Applicant was drinking "many days within a week," in greater quantity on the weekends. Applicant recalls drinking to intoxication only once between 1995 and 2001, which was on a weekend in 2000 (Tr. 89). From 2001 to 2003, Applicant drank a couple of beers per night (Tr. 90).

In June 2003, Applicant married his current spouse, whom he had met in 2001 while singing in the choir at church (Tr. 54-55, 64, 91). She had four adult children (Ex. 1, Tr. 64-65). He had problems adjusting to his new marriage, and felt, as he had with his first wife, that she was trying to control him (Tr. 55). Applicant started drinking more on the weekends to avoid a relationship with her (Tr. 55). In 2004, his employer recommended that he seek alcohol treatment due to a decline in his work productivity (Tr. 91-95). In August 2004, Applicant admitted himself to a five-day inpatient detoxification program at hospital X. After he was discharged, he began attending weekly AA meetings and a recovery group meeting on Wednesdays at the hospital (Answer, Ex. 1, Tr. 96).

As of October 2004, Applicant was drinking about two to four glasses of wine per night (Tr. 97). He returned to hospital X for a brief detoxification as an inpatient and then outpatient treatment (Answer, Tr. 98). On his discharge, Applicant began weekly private treatment with a substance abuse counselor, an LICSW, who had facilitated the early recovery group he attended at hospital X (Ex. E, Tr. 98). He also attended Wednesday night group sessions with a psychologist (Tr. 98).

Applicant relapsed after eight months of sobriety (Answer). On the advice of his substance abuse counselor, he readmitted himself for treatment to hospital X for a few days in July 2005. He consumed a drink after his discharge, and returned to the hospital in September 2005 for a few more days of treatment for diagnosed alcohol dependence, as he wanted to prevent further abuse (Tr. 99). Applicant stopped drinking beer after this admission (Ex. 2).

In renewal of his security clearance (Tr. 65), Applicant completed an e-QIP on April 6, 2006. He responded affirmatively to question 25 concerning whether his use of alcohol had resulted in any alcohol-related treatment or counseling in the last seven years, and listed his treatment by physicians at hospital X's address in August 2004, October 2004, July 2005, and September 2005. In the additional comments section of the e-QIP, Applicant added that he still owned the marital home he had shared with his first wife, that he attended AA meetings regularly, and that his father and two uncles (one killed) had fought in World War II (Ex. 1).

In April 2006, Applicant underwent a medical procedure. Instead of taking his prescribed narcotic, he drank red wine in quantity sufficient for the pain to subside (Tr. 99-100). In late September 2006, Applicant readmitted himself for several days of

inpatient alcohol treatment to hospital X. He was given a prescription medication, Campral, to decrease his craving for alcohol, but it was ineffective. Following his discharge, Applicant began daily intensive outpatient group sessions, but he relapsed by drinking mouthwash containing alcohol in October 2006 (Answer, Tr. 100).

During the first quarter of 2007, Applicant had difficulty dealing with his mother's deteriorating medical condition that necessitated her transition into an assisted living situation. Instead of calling his AA sponsor, who has over 35 years of sobriety (Ex. D, Tr. 124), Applicant relapsed by drinking mouthwash and then red wine for a period of several weeks. He returned to hospital X in March 2007 for additional inpatient treatment followed by outpatient group sessions (Answer, Ex. F, Tr. 100-01).

Applicant remained abstinent until sometime in April 2007, when his mother again experienced problems and he "picked up a drink again" instead of calling his AA sponsor (Tr. 103). He drank one drink daily, initially mouthwash and then small bottles of red wine that he bought at the grocery store en route home from work (Tr. 120). He did not consider calling his counselor before buying the wine as he was not ready to accept that he had to rely on the help of others (Tr. 121-22).

During the weekend of May 5, 2007, Applicant and his spouse planned to visit her daughter living out of state. Informed by his spouse that he could not accompany her if he was going to drink any alcohol, Applicant decided to stay home as he was unwilling to commit to abstinence (Tr. 102). He drank for four days. In the morning of May 8, 2007, Applicant drove to the home he still owned from his previous marriage.² After he pulled in the driveway of the residence, Applicant realized he should not have driven. Uncertain what to do and not wanting to enter the house because of the bad memories associated with the house (Tr. 105), he tried to call his AA sponsor on his cell phone but was not successful. Applicant then drove the 1.2 miles to the police station to ask for help (Tr. 56-57, 105-06). As the police approached, Applicant exited his vehicle and indicated, in slurred speech, that he should not be driving and that he was drunk. Applicant failed field sobriety tests and a breathalyzer administered to him at the station. Around 1045 hours, he was arrested for OUI with a blood alcohol content of .20%. At Applicant's request, he was then transported to the hospital. Around 1245 hours he was released back into the custody of the police. At about 1415 hours, he was transported by the police to the district court where further testing showed a 23% blood alcohol level. Determined to be too intoxicated to be arraigned, Applicant was placed in protective custody and transported back to the police station (Ex. 3).

Applicant appeared in court on May 22, 2007. He admitted to sufficient facts, and the case was continued without a finding for one year on the condition that he successfully complete his probation and pay fines and fees. Terms of probation included loss of license for 45 days, completion of a 16-week driver alcohol education program, and continued participation in AA three times per week as well as his counseling with the substance abuse counselor he had been seeing since October 2004

²Applicant testified that he was drunk ("I probably exceeded the legal limit") from the night before (Tr. 103-04).

(Ex. 3, Tr. 59). Two days after his court appearance (Ex. 2, Tr. 107), and again on June 2, 2007, Applicant drank mouthwash containing alcohol ("There was a side of me that was still not ready to quit. My wife was driving me around, I was determined to maintain my right to drink. . . ." Tr. 118). He did not contact his sponsor because he did not want to disappoint him (Tr. 125).

In response to DOHA interrogatories, Applicant indicated on June 4, 2007, that he was not drinking any alcohol and did not intend to drink in the future; that he was still in counseling every Thursday night with the substance abuse counselor but was no longer attending group therapy on Wednesdays at hospital X since he has been attending AA meetings and commitments on Wednesdays. His AA attendance over the past year had averaged four meetings weekly. He disclosed his recent OUI in May 2007 and loss of license, which forced him to call AA members to get to meetings and resulted in closer relationships with other AA members. Applicant expressed his goal "to not take the first drink and remain abstinent no matter what happens." (Ex. 2).

As of February 27, 2008, Applicant had been abstinent from alcohol since he drank the mouthwash on June 2, 2007 (Ex. F, Tr. 61), although he continued to experience cravings for alcohol to at least late December 2007 (Tr. 126). He still attends weekly counseling sessions with his substance abuse counselor (Tr. 60-61), who believes he is sober and has "finally achieved some of the serenity that sobriety and AA have offered." (Ex. E). Applicant also attends three AA meetings (speaker, home group, Big Book meetings) weekly (Tr. 122). Unlike in the past, he has taken a more active role in AA by speaking about his OUI on commitments (Tr. 123). Within the last several months, Applicant realized that he has to contact his sponsor even if he does not want to (Tr. 126). This sponsor considers him to be doing very well in the AA program (Ex. D). Applicant understands he is an alcoholic and that if he drinks the first drink, he will eventually be unable to stop drinking ("I've proved that experiment many times, expecting different outcomes." Tr. 62). Applicant's relationship with his spouse has improved since June 2007 (Ex. C, Tr. 63).

Following normal liver functioning tests in September 2007, Applicant's internist expressed his clinical opinion that Applicant's "outlook is dramatically more favorable than it was earlier in our relationship." A recent examination of Applicant in February 2008 confirmed for the physician that Applicant was completely sober (Ex. F).

The May 2007 OUI is the only transgression on Applicant's driving record (Ex. B, Tr. 115-16). Applicant's work performance for 2004, 2005, and 2006 met his employer's requirements. While tasks were behind schedule in 2005 due to Applicant's failure to take more initiative to "pin down the knowledgeable engineers," he was rated as a good software engineer (Ex. A). None of his annual reviews for 2004 through 2006 contain any unfavorable comments about Applicant's attendance or reliability.

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition

to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline G, Alcohol Consumption

The security concern relating to the guideline for alcohol consumption is set out in AG ¶ 21: "Excessive alcohol consumption often leads to the exercise of questionable

judgment or the failure to control impulses, and can raise questions about an individual's reliability and untrustworthiness." Applicant is a high-functioning alcoholic who has battled his drinking problem since August 1991 when he admitted himself to a mental health/substance abuse treatment facility for the first time. After he was discharged, he was abstinent for some 20 months, but despite ongoing counseling, was not willing to acknowledge that he could not control his drinking or that he needed the help of others to remain sober. Over the next 14 years, he experienced several relapses of varied duration, which he sought to minimize through additional treatment. Periods of sobriety after treatment or while in active outpatient therapeutic relationships ranged from days to months. His struggles to control his drinking eventually culminated in a May 2007 OUI committed about a year after he had obtained his sponsor in AA and more than two years into his weekly individual counseling with his current therapist, a certified substance abuse counselor. While doubtless the OUI had an impact on his behavior, he relapsed twice after his arrest by drinking mouthwash containing alcohol.

His recent OUI offense raises security concerns under AG ¶ 22(a) ("alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent"). Moreover, AG ¶ 22(c) ("habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent") is implicated. He drank excessive amounts in at least 1991 (four beers plus a liter of wine daily with up to three liters on some Saturdays), in July 1995 (ten beers after his father's funeral), in December 1995 (ten beers while alone in his home), and from May 5, 2007 to May 8, 2007, when his blood alcohol content tested at .20% at 1045 hours, which he claims was from drinking the night before. Furthermore, the evidence shows he was diagnosed as alcohol dependent by the psychiatrist in charge of hospital X's alcohol and drug treatment center in 1991, by medical professionals during at least his September 2005 readmission, and by the LCSW who counseled him from August 1994 to at least June 1996. AG ¶ 22(d) ("diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence") must be considered in evaluating Applicant's continued suitability for access. Finally, given his repeated relapses following alcohol treatment, including six separate admissions to hospital X since 2004, AG ¶ 22(f) ("relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program"), applies.

The recency of Applicant's abusive drinking and his history of relapses preclude consideration of mitigating conditions AG ¶ 23(a), which applies to alcohol abuse sufficiently in the past, infrequent, or uncharacteristic "that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," or AG ¶ 23(c) which applies only to current employees in counseling or treatment without a history of previous treatment and relapse. AG ¶ 23(b) requires that "the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)." Applicant admitted that even after the May 2007 OUI, he was determined to maintain his right to

drink. He testified credibly to finally realizing that he is an alcoholic and that he cannot safely take that first drink. His regular attendances at AA three times weekly, demonstrated commitment to the AA program by speaking about his OUI, and continued weekly sessions with the substance abuse counselor, are just the latest in a long history of actions taken to overcome his problem. Yet, the government contends that Applicant's present abstinence of only about nine months is insufficient to demonstrate the established pattern of abstinence also required under AG ¶ 23(c) because of his alcoholism. The quality of Applicant's commitment to recovery during his latest abstention is a relevant factor in determining whether his present abstinence provides adequate guarantees against further relapses. There is credible evidence from others who know Applicant well (his spouse, counselor, and AA sponsor) confirming that Applicant is genuinely committed to his recovery. However, the evidence also shows it has only been in the last several months that Applicant has gone on AA commitments and realized that he has to call his sponsor even when he does not want to. Given Applicant's history of repeated relapses as well as the seriousness of his relapses, it would be premature for me to conclude at this juncture that he has established a sufficient pattern of abstinence. The magnitude of Applicant's drinking problem is shown by his choice of alcohol over his prescription medication in April 2006, and by his May 2007 OUI. He was very intoxicated when he drove from the home he shares with his spouse to his old residence in another town, as evidenced by a blood alcohol content reported to be 23% at 1415 hours, some 3.5 hours after his arrest. When asked at his hearing whether he was drunk when he drove his car to his old home, Applicant responded, "I probably exceeded the legal limit." (Tr. 104). His severe intoxication was definite, not just probable.

Applicant stands in a similar situation with respect to satisfying some but not all of the requirements of mitigating condition ¶ 23(d) ("the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program"). Applicant is credited with seeking treatment and complying with his various programs. But the success of his treatment efforts is debatable when judged in terms of Applicant's insight into his alcohol problem, and willingness to commit himself to what is required to bring about sustained abstinence. Despite several admissions to hospital X since October 2004, and ongoing substance abuse counseling, Applicant did not think of calling his substance abuse counselor before he stopped at the store to buy red wine in April 2007. Nor did he contact his AA sponsor before he drank the mouthwash in June 2007 because he did not want to disappoint him.

While it took an OUI offense for Applicant to reconsider his attitude toward drinking, recent assessments of his prognosis are favorable. His counselor believes him to be sober and to have "finally achieved some of the serenity" offered by sobriety and AA. She also confirms he is "learning" to ask for help when needed, that he looks forward to his AA meetings, and is "starting" to be able to give back to the program (Ex.

E). Although not a clear statement of his prognosis, they are clearly favorable indicators of progress. Following normal liver functioning tests in September 2007, Applicant's internist expressed his clinical opinion that Applicant's "outlook is dramatically more favorable than it was earlier in our relationship." (Ex. F). A recent examination of Applicant in February 2008 confirmed his sobriety. Despite the favorable prognosis, for the reasons noted above, Applicant has not yet demonstrated the clear and established pattern of abstinence required to overcome the very serious alcohol consumption concerns.

Guideline J, Criminal Conduct

The security concern relating to the guideline for criminal conduct is set out in AG ¶ 30: "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations." Applicant's May 2007 OUI is recent criminal conduct that implicates AG ¶ 31(a) ("a single serious crime or multiple lesser offenses"). Although adjudication was withheld for one year, the evidence proves he was drunk when he drove his vehicle from one town to another and then from his home to the police station in May 2007. AG ¶ 31(d) ("individual is currently on parole or probation") also applies because Applicant is on probation for the OUI until May 21, 2008.

Applicant's OUI is isolated, and uncharacteristic of his drinking habits. Although he consumed alcohol in the past at gatherings of members of the outdoor club, he drank to excessive levels primarily if not solely at home, usually on the weekends when he shut himself off from others. However, Applicant's OUI is too recent and reflects such poor judgment to favorably consider AG ¶ 32(a) ("so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment."). Applicant's record of good work performance with his current employer and his remorse about the OUI are evidence of rehabilitation that can be considered under AG ¶ 32(d) ("there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement"), but Applicant is still on probation for his criminal conduct. As the DOHA Appeal Board held in ISCR 05-07893 (App. Bd. Oct. 1, 2007), current probationary status is not a per se bar to a favorable clearance decision. However, it significantly undercuts a finding of successful rehabilitation. As long as a risk of future abusive drinking persists, another alcohol-related incident cannot be ruled out.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has held a security clearance without any violations for about 35 years. Work gave him structure and something to focus on other than the problems that were leading him to drink at home, but alcohol also affected his productivity at times. In October 2004, his supervisor advised him to seek treatment. While relapses to some extent can be expected, Applicant put his desire to control his own choices ahead of his personal relationship with his spouse in May 2007 and even ahead of his fiduciary obligation to the

government. As a longtime cleared employee, Applicant knew or should have known that protecting classified information is a 24-hour-per-day responsibility that extends beyond the workplace, and drinking to intoxication is incompatible with that duty. At this time, I am unable to conclude that it is clearly consistent with the national interest to continue his clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	AGAINST APPLICANT
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Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant ³
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant

Paragraph 2, Guideline J:	AGAINST APPLICANT
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Subparagraph 2.a:	Against Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ELIZABETH M. MATCHINSKI
Administrative Judge

³Treatment completed is viewed favorably. Adverse findings are nonetheless returned as to ¶¶ 1.b, 1.d., 1.e, 1.f, and 1.g. because of his relapses after treatment.