



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



In the matter of: )  
 )  
----- ) ISCR Case No. 07-11913  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Gina Marine, Esquire, Department Counsel  
For Applicant: Patrick A. Fayle, Esquire

December 18, 2008

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on October 30, 2006. On June 18, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline G that provided the basis for its decision to deny him a security clearance. 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 as of September 1, 2006.

Applicant answered the SOR in writing on July 10, 2008, and requested a hearing before an administrative judge. The case was assigned to me on July 22, 2008, to consider whether it is clearly consistent with the national interest to grant or continue

a security clearance for him. On September 4, 2008, I scheduled a hearing for October 1, 2008. At the request of Applicant's counsel, I granted a continuance on September 19, 2008. By notice dated October 3, 2008, I rescheduled the hearing for November 6, 2008.

The hearing was held as rescheduled. Five government exhibits (Ex. 1-5) and 13 Applicant exhibits (Ex. A-M) were admitted without any objections. Applicant and his spouse testified, as reflected in a transcript (Tr.) received on November 14, 2008. Based on review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

DOHA alleged under Guideline G, alcohol consumption, that Applicant consumed alcohol on a daily basis, including to intoxication at least once to twice each week, from about 1997 to August 2005 (SOR ¶ 1.a); that he admitted himself for detoxification to a hospital on August 8, 2005, where he was diagnosed with alcohol dependence and following treatment discharged on August 10, 2005 (SOR ¶ 1.b); that on discharge he was advised to continue in aftercare and he indicated he would attend Alcoholics Anonymous (AA) (SOR ¶ 1.c); that after abstaining for about one year he resumed drinking alcohol in 2006 (SOR ¶ 1.d); and that he has continued to consume alcohol since 2006 despite being diagnosed as alcohol dependent (SOR ¶ 1.e). Applicant admitted the allegations but in response to SOR ¶ 1.e, he denied that he is alcohol dependent. His admissions are incorporated as factual findings. After considering the record evidence, I make the following additional findings.

Applicant is a 39-year-old operations analyst who has been employed by a defense contractor since November 2005 (Ex.1, Tr. 34). He seeks a secret security clearance (Ex. D).

After high school, Applicant worked as an automotive technician while pursuing his associate's degree in that trade at a local technical college (Tr. 21-22). On receiving his degree in May 1989 (Tr. 24), he continued to work at the same automotive center for the next nine years (Ex. 1, Ex. M). Applicant, who had his first drink at age 18 (Ex. 2, Ex. 3, Tr. 22), consumed alcohol in a social context, primarily on weekends (Ex. H, Tr. 23). Coworkers with whom he consumed alcohol consider Applicant's drinking to have been social and appropriate, as he drank no more than three or four beers per occasion (Ex. H, Ex. I).

In August 1997, Applicant began working as a bar back/bartender at a downtown club (tavern) while maintaining his day job as an automotive mechanic (Ex. 1, Ex. M). In February 1998, he left the auto center and became a full-time employee of the tavern

(Ex. 1, Ex. M, Tr. 23). The work environment was conducive to drinking,<sup>1</sup> and Applicant began to consume alcohol on a daily basis, and to intoxication a few times each week. His drinking increased over time to 30 beers or more per day (Ex. J). He drank during the day before reporting to work at 6:00 p.m. and also while on the job (Tr. 24-25). His roommate at the time, who has known him since they worked together at the automotive center, warned Applicant that his drinking was getting out of control (Tr. H). In about 2003, Applicant was thinking about reducing his consumption. At the urging of his then girlfriend who thought he was drinking too much, Applicant attended one AA meeting to see what it involved (Tr. 135-36).

In spring 2004, Applicant met his spouse and they began dating shortly thereafter (Tr. 26, 74). He was up-front with her about his drinking when she asked him, but she did not realize the magnitude of his drinking problem at that time (Tr. 80).

Applicant was laid off from his job at the tavern in late November/early December 2004. Applicant moved in with his spouse and her then five-year-old daughter, and they married later that month (Ex. 1, Tr. 27, 78). He worked as a painter, full-time starting in spring 2005 (Ex. 1, Ex. M, Tr. 28, 80).<sup>2</sup> Applicant did not drink at work, but consumed alcohol excessively at home after work, about 20 beers on a daily basis (Tr. 29-30). Given an ultimatum from his spouse that they would not stay together unless he regained his sobriety (Ex. J), Applicant experienced withdrawal symptoms (“shakes,” vomiting) as he unsuccessfully attempted to cut back on his drinking (Tr. 48-49, 81-82, 92). With his spouse expressing daily concerns about his drinking and fears that he would have a heart attack if he stopped drinking without medical supervision (Tr. 82-83), he voluntarily sought detoxification treatment at a hospital on August 8, 2005 (Ex. 3, Tr. 30-31). His blood alcohol level was .17%, and he was diagnosed with alcohol dependence. Applicant appeared motivated to achieve sobriety, but he also expressed that he may be able to drink socially some day. Initial treatment plan was a five-day medical detoxification with group and individual sessions. He was discharged on August 10, 2005, with an aftercare appointment scheduled for August 16, 2005, and a plan to attend AA meetings (Ex. 4). He was advised to abstain from alcohol (“They just say abstain . . . I don’t think it was specified whether it was permanent.” Tr. 52). At

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<sup>1</sup>Applicant attributes his excessive drinking to his lifestyle at the time. He was working in a bar and up all night:

I would get up in the afternoon, that’s when my friends would be getting together and, you know, they had already worked all day, so they were having a couple of beers, while me, hanging with them, it was like morning for me but it was actually evening for them, so it just kind of progressively got away from me. (Tr. 61)

<sup>2</sup>Applicant listed his employment as a painter on his e-QIP (Ex. 1) but not on his resume (Ex. M). When he was admitted for detoxification treatment in August 2005, he told the medical staff that he had been unemployed for five months (Ex. 4).

discharge, Applicant's intent was to abstain from alcohol until he felt ready to handle social drinking (Tr. 52-53).

Following his discharge, Applicant did not consume any alcohol for about 11 months (Ex. 3, Tr. 32, 55). He went to three or four AA meetings with a friend's father involved in the program (Tr. 125), but did not think AA was for him (Tr. 53-54, 70). He did not pursue any other aftercare (Tr. 55, 131-32). On occasion, he discussed alcohol issues with his friend's father (Tr. 125-27, 137). Most of these discussions took place shortly after his detoxification treatment (Tr. 137). Applicant has not initiated contact with him recently surrounding his alcohol use because he has not felt the need to do so (Tr. 126).

In November 2005, Applicant started working for his present employer as an installation mechanic/painter (Ex. 1, Ex. M, Tr. 33-34). He testified he did not require a security clearance for that position (Tr. 34), although he completed his e-QIP on October 30, 2006 (Ex. 1).

Applicant drank two or three beers on July 4, 2006 (Tr. 32, 57, 99). He no longer considered himself to have an alcohol problem, and he felt he was ready to handle social drinking (Tr. 55-56). He and his spouse discussed the issue of him resuming drinking beforehand, and they agreed that if either of them felt his drinking was a problem, there would be no drinking (Tr. 85). He has continued to consume beer with his spouse and/or friends because he enjoys it (Ex. 2). He testified he consumes usually two or three, "just every once in awhile, maybe a couple times a week on the weekends" (Tr. 33, 59, 64, 68), although in response to DOHA interrogatories, he related in October 2007 a frequency of "0-10 12 oz. beers weekly" (Ex. 2). He also drinks at home with dinner on occasion, to as recently as November 2008 (Tr. 105-06). In June 2008, he drank four beers at a friend's bachelor party (Tr. 70). Applicant continues to socialize with the friends with whom he drank excessively in the past (Tr. 61). On occasion, he has gone out and purchased a six-pack of beer to bring to the neighbors or to friends and friends have brought beer to his residence (Tr. 102). He denies drinking to intoxication (i.e., losing control) since July 2006 (Tr. 58). The friend whose father took Applicant to AA in 2005 has offered Applicant a beer during the work week and on weekends. He has not seen him drink to excess (Ex. G). Applicant informed his friend's father that he has resumed drinking. A recovering alcoholic (Ex. G) with more than 20 years of sobriety (Tr. 120), he told Applicant to be careful, although he made no specific recommendation as to whether Applicant should abstain (Tr. 127-28). Applicant intends to continue to consume alcohol at his present rate (Ex. 3). He has never been arrested on any alcohol-related charges (Ex. 3, Tr. 38).

Since resuming drinking, Applicant has not consumed alcohol on the job. Nor has he reported for work intoxicated or impaired from alcohol (Ex. A, B, C, D, E, F, Tr. 39). His performance evaluations show he was fully satisfactory in all factors, including productivity and attendance, since he started working for his employer. He was

motivated to get the job done and required little supervision (Ex. L). Very dependable, he worked overtime when asked and the quality of his work was “exemplary” (Ex. D). In 2007, Applicant was formally recognized by his employer on two separate occasions for his contributions in improving processes (Ex. K, Tr. 45-46). In March 2008, Applicant was promoted to the salaried position of a senior operations analyst in the paint shop at an increase in his annual pay of between \$10,000 and \$15,000 depending on overtime (Tr. 40-41). Applicant’s current supervisor requested that Applicant obtain a security clearance so that he can perform additional duties. He has found Applicant’s reliability and trustworthiness to be above reproach and his judgment sound (Ex. E, Ex. F). An engineering specialist who has worked alongside Applicant since November 2005 has observed that he works well under pressure. Applicant stays focused on his task, and he is always punctual (Ex. A, Ex. B).

On July 1, 2008, Applicant underwent an hour long voluntary alcohol evaluation by a licensed social worker/counselor to prove he was not alcohol dependent (Ex. J, Tr. 62). Asked to identify recent problems of concern to him, Applicant indicated he was using alcohol to feel relaxed in social situations. The social worker deferred any diagnosis pending further evaluation to rule out substance abuse/dependence. On July 8, 2008, Applicant met with the social worker for another hour, and he provided a substance abuse history. He indicated he was drinking one to three beers, twice a week, with last use on July 4, 2008. Applicant admitted he had consumed 30 beers per day for about 18 months from 2003 to 2005 but denied being intoxicated since. After also reviewing a statement from Applicant’s spouse in which she corroborated “the positive changes” Applicant had made in his lifestyle, including his drinking, the social worker diagnosed Applicant with alcohol dependence in sustained full remission (Ex. J).

In February 2008, Applicant adopted his spouse’s daughter (Tr. 86). In about October 2008, he and his spouse purchased their first home. Currently she does not work outside the home (Tr. 37, 87-88).

## **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 that 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 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 had his first drink at age 18. While employed as an auto mechanic, he drank beer in moderation, including with coworkers. However, after going to work as a bartender in 1997, he began to drink daily and eventually in excessive amount, about 30 beers per day. As evidenced by the expressed concerns of a former girlfriend and of his roommate, his drinking was out of control by 2003. Following his job layoff from the tavern and his marriage in December 2004, he experienced withdrawal

symptoms when he attempted to curb his consumption, and he continued to drink to abusive levels (about 20 beers daily after work). 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”) applies. Given he was diagnosed by a physician as suffering from alcohol dependence when he sought detoxification treatment in August 2005, disqualifying condition AG ¶ 22(d) (“diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence”) also applies.

Applicant offers in mitigation 11 months of abstinence from August 2005 to July 2006 followed by two plus years of controlled drinking with no negative impact on his work or family life. Applicant has not consumed alcohol to intoxication in the past three years. Yet I am unable to apply mitigating condition AG ¶ 23(a) (“so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment”). He drank habitually to excess for more than seven years, including after he was laid off from his job at the tavern. Employment in the bar environment cannot fully explain his serious alcohol problem. Not everyone who works as a bartender develops alcohol dependency.

Applicant’s voluntary admission for detoxification in August 2005 is action taken to overcome his problem (see AG ¶ 23(b), “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)”). But AG ¶ 23(b) cannot be fully applied based on the relatively short 11-month period of abstinence in comparison to his years of daily excessive consumption leading to physiological dependence. Furthermore, Applicant has shown little insight into his alcohol problem. When asked whether he felt he had a drinking problem when he admitted himself for detoxification, Applicant responded, “At that time, yeah” (Tr. 56). By July 2006, when he felt he was ready to drink socially, Applicant did not think he had a drinking problem (“I mean, you now, once you’re, it seems like once you’re labeled, you’re labeled, but I felt I really didn’t have any kind of drinking problem”) (Tr. 57). The medical records shed little light on any specific insights gained by Applicant about his alcohol problem during his brief hospital stay, and his testimony raises considerable concerns as to what he understands is required on his part to maintain sobriety for the long term. Asked about what he learned during his detoxification, Applicant testified, “Well, I wasn’t really there to learn anything, I was there to get myself off the, you know, get myself off the dependency” (Tr. 51-52).

In July 2008, Applicant was evaluated by a licensed social worker to prove he is not alcohol dependent. Based on Applicant’s self-report, including that he was drinking one to three beers twice a week, the social worker apparently concluded that the criteria for dependence have not been met at any time during a period of at least 12 months (see Ex. 5), as he diagnosed Applicant with alcohol dependence, sustained full

remission. There is independent validation for this qualifier in Applicant's excellent work record for his employer over the past three years. It is unlikely Applicant would have been able to sustain a high record of level if he was drinking to intoxication. At the same time, the social worker validated the original diagnosis of alcohol dependence. He did not offer a prognosis with respect to whether Applicant, who abused alcohol to the point of medically diagnosed dependence in the past, risks relapse by continuing to drink alcohol on a regular basis against medical advice to abstain.

Since Applicant is not pursuing any treatment and is not involved in AA or similar organization, AG 23(c) ("the individual is a current employee who is participating in counseling or a treatment program, has no history of previous treatment and relapse, and is making satisfactory progress") does not apply. Even if I was to conclude that his detoxification fulfilled the counseling requirement of AG ¶ 23(d),<sup>3</sup> he lacks the favorable prognosis, and compliance with aftercare and abstinence required for mitigation under that mitigating condition ("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 treatment program").

### **Whole Person Concept**

Under the whole person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the conduct and all the circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

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<sup>3</sup>Alcohol detoxification may include counseling, but it is primarily medical treatment to withdraw a person from alcohol and to relieve the symptoms of that withdrawal. By relieving the physical dependence on alcohol, it prepares a person for rehabilitation, which includes counseling, psychological support, medical care, and therapy to educate about alcoholism and its effects, to ensure against future alcohol use/abuse. Rehabilitation may incorporate family and social interventions to increase its effectiveness. The evidence does not establish that Applicant underwent any alcohol rehabilitation following his detoxification.



Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant bears a substantial burden of mitigation, especially where he does not fully satisfy any of the Guideline G mitigating conditions. With the help of a three-day detoxification in August 2005, and some informal discussions with a friend's father who has over 20 years of sobriety, Applicant managed to bring his alcohol dependency problem in full remission. At the same time, he continues to drink alcohol on a regular basis, with no appreciation that he might be risking his sobriety by doing so. He elected not to pursue recommended aftercare counseling, and has no formal support network in place to assist him should he find himself drinking more in the future. His relationship with his friend's father is too sporadic for this person to be considered even an informal sponsor. Discussions Applicant had with him about alcohol (how you feel after you quit drinking, how to change your lifestyle) were close to the time he finished his detoxification. Applicant testified that he has had little reason to initiate contact with him to discuss alcohol issues, although he did inform him that he had resumed drinking. Regular drinking at even a reduced level of two to three beers a couple times a week raises some doubt as to his commitment to his sobriety, given his extensive abuse in the past. I am unable to conclude that it is clearly consistent with the national interest to grant or continue a security clearance for him.

### **Formal Findings**

Formal findings 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant

## **Conclusion**

In light of all of the circumstances presented 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