



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



In the matter of:)
)
) ISCR Case No. 08-03181
)
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

May 11, 2011

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant has abstained from alcohol since December 2004, following his fifth arrest for drunk driving. He completed court-ordered treatment and has been actively involved in Alcoholics Anonymous (AA) for over four years. His alcohol dependence is in full, sustained remission with a highly favorable prognosis for continued sobriety. Clearance granted.

Statement of the Case

On August 12, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline G (Alcohol Consumption), which provided the basis for its preliminary decision to revoke his security clearance. DOHA took action 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 adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant responded to the SOR allegations on September 10, 2010, and he requested a hearing. The case was assigned to me on November 3, 2010, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On November 12, 2010, I scheduled a hearing for December 15, 2010.

I convened the hearing as scheduled. Eleven Government exhibits (Ex. 1-11) were admitted without objection. Applicant questioned the relevance of another document, which Department Counsel chose not to submit. The SOR was later amended at the Government's request without objection to strike from the SOR the allegation addressed in the withdrawn document. Applicant and a witness testified, as reflected in a transcript (Tr.) received on December 23, 2010. I held the record open for post-hearing submissions from Applicant. Five Applicant exhibits (Ex. A-E) were admitted after the hearing.

Procedural and Evidentiary Rulings

SOR Amendment

At the hearing, the Government withdrew a criminal record before it was marked in response to Applicant's concerns about its relevance. The document on its face pertained to the drunk-driving offense alleged in what was then SOR 1.e, but Applicant was not the defendant named in the court record. The Government moved to amend the SOR to strike SOR 1.e and re-letter the subsequent allegations. Applicant did not object. The SOR was amended, and the allegations in SOR 1.f–1.i became SOR 1.e–1.h.

Post-Hearing Exhibits

Applicant offered AA attendance records as Exhibit A, and a certificate of completion of a court-mandated second offender driving under the influence (DUI) program as Exhibit B. He had only originals of the documents, which he wanted to retain in his possession. The proposed exhibits were marked for identification, and their admission was made contingent on post-hearing submission of copies and no valid objections from Department Counsel. At Applicant's request, I ordered the record held open until January 14, 2011, for Applicant to also undergo, and submit a report of, a recent alcohol evaluation, and to submit other documents, including character reference letters.

On January 4, 2011, Applicant timely forwarded a copy of his AA attendance records (Ex. A), a letter that he authored (Ex. C), a report of a substance abuse evaluation (Ex. D), and a reference letter from his AA sponsor (Ex. E.) On January 7, 2011, I gave Department Counsel until January 18, 2011, to file any objections. I also reminded Applicant that the record was still open should he choose to submit a copy of the certificate and related documents previously marked as Exhibit B at the hearing. On January 10, 2011, Applicant submitted a copy of the certificate and related discharge summary and diagnostic reports. Department Counsel did not object to their admission, and Applicant exhibits A through E were accepted into the record.

Summary of SOR Allegations

The amended SOR alleged under Guideline G, Alcohol Consumption, that Applicant was diagnosed with alcohol dependency around December 2005 following a relapse, and that he was still participating in a recommended outpatient program as of August 2010 (SOR 1.a). Applicant was also alleged to have consumed alcohol, at times to intoxication as frequently as weekly, from age 17 or 18 until at least December 2004 (SOR 1.b); to have been convicted and placed on probation for unlawful possession of a controlled substance and public drinking in August 1976 (SOR 1.h); to have been arrested for driving under the influence in April 1977 (SOR 1.g), April 1985 (SOR 1.f), May 1987 (SOR 1.e), February 1999 (SOR 1.d), and December 2004 (SOR 1.c); and to have been convicted and sentenced for the 1985, 1999, and 2004 offenses.¹

Findings of Fact

In his Answer, Applicant admitted the charges and sentences as alleged in SOR 1.c, 1.d, 1.f, and 1.g. He denied the remaining allegations. His admissions are incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is 52 years old, and he works for a defense contractor. He started as an inspector for the company in August 1978, and from March 1992 until September 2009, he worked as an assembler at a different work location than his present assignment. In May 1992, he was granted a confidential-level security clearance (Ex. 1.), which he seeks to retain. (Tr. 123.)

¹All of his drunk-driving offenses occurred in the same state. The Government referred to the offense as Driving under the Influence of Alcohol (DUI) or DUI-liquor in SOR 1.c and 1.d, and as OUI-Liquor or OUI in SOR 1.e through 1.g. The pertinent state law governing drunk driving is titled as follows and provides in part:

§ 90:24. Driving while under the influence of intoxicating liquor, etc.; second and subsequent offenses; punishment; treatment programs; reckless and unauthorized driving; failure to stop after collision

Whoever, upon any way or in any place to which the public has a right of access, or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle with a percentage, by weight, of alcohol in their blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, or of marijuana, narcotic drugs, depressants or stimulant substances, all as defined in section one of chapter ninety-four C, or the vapors of glue shall be punished by a fine of not less than five hundred nor more than five thousand dollars or by imprisonment for not more than two and one-half years, or both such fine and imprisonment. . .

The statute provides for increasing fines and jail terms depending on the number of prior convictions or times the defendant has been assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a court of the commonwealth or any other jurisdiction. In the court records, the offense is referred to as "OUI-Liquor" (Ex. 5, 6) or "Operating Under the Influence of Liquor" (Ex. 7, 8), although the registry of motor vehicles uses the term "DWI Liquor." (Ex. 2.)

A victim of sexual abuse during his youth (Tr. 55-59.), Applicant began drinking alcohol at age 17 or 18. He drank socially with friends on weekends, usually two or three cans of beer. In August 1976, Applicant was charged with public drinking and with possession of a controlled substance. Applicant was parked in a local park with a friend, when a police officer searched his vehicle and found a beer and a small amount of marijuana. Applicant was found guilty of both charges. He was placed on probation for six months for the drug charge and fined \$10 for public drinking. (Ex. 3; 10; Tr. 34, 60-61.)

During the daytime hours on April 19, 1977, Applicant was pulled over by local law enforcement for crossing the yellow line. The officer thought he had been drinking, which Applicant denies, and he was told to remain off the road for the rest of the day. Later that night, the same officer observed Applicant driving around with his friends, and he arrested him for OUI. Applicant had consumed a couple of beers with his friends. He was ordered by the court to attend a weekly counseling program held at a local hospital. On April 21, 1978, the charge was dismissed. (Ex. 3; 9; Tr. 62-64.) Applicant does not recall the specifics of counseling. (Ex. 3; Tr. 63.) He believes he was arrested unfairly in retaliation for Applicant's family seeking redress following an attack by the officer's dog. (Tr. 34-35.)

Applicant continued to drink alcohol socially on the weekends, becoming intoxicated no more than twice per week, after he started working for his present employer in August 1978. He did not consume any alcohol before going to work. (Ex. 3.)

In June 1981, Applicant fractured two vertebrae in his neck and suffered a concussion in a serious car accident en route to work. He was a passenger in a vehicle driven by a friend. Applicant had a long recovery and suffered from complications that left him unable to work for 18 months. Financial pressures, due in part to non-covered medical expenses, led him to move in with his parents and to take a second job at a local officers' club every Thursday through Saturday. He eventually resumed drinking alcohol in anger over the manner in which his lawsuit was resolved against the person responsible for the accident. (Ex. 3; Tr. 39-42, 65.)

In late April 1985, Applicant was returning home on his motorcycle from his part-time job at the officers' club when he pulled over to urinate. A law enforcement officer stopped and smelled alcohol on Applicant's breath. Applicant refused to submit to a sobriety test, and he was arrested for OUI. (Ex. 3; Tr. 65-66.) Applicant admitted sufficient facts and was found guilty. He was assessed fines and costs totaling \$140, placed on probation until May 16, 1986, and ordered to attend a second offender's program. He was discharged from probation on March 30, 1987, after he satisfied all conditions. (Ex. 3; 8.) Applicant was diagnosed at the second offender's program as having an addictive personality related to alcohol. (Tr. 66-67.)

In late May 1987, Applicant drank four or five eight-ounce beers while socializing with some friends at a restaurant. He and his friends were all on their motorcycles with Applicant in the lead when he decided to pass a vehicle. The vehicle suddenly turned left, and Applicant failed to make the corner. (Tr. 78.) Applicant was treated for minor injuries at a local hospital, and his blood alcohol content was reported to the police. Applicant was

charged with OUI and with a civil infraction of failing to drive a safe distance to the left of the other vehicle. He admitted sufficient facts and was found guilty of OUI in July 1987. He was assessed costs and fees totaling \$215, placed on probation until July 13, 1988, and ordered to attend an alcohol safety action program. He also lost his driver's license for 45 days. Applicant satisfied all requirements, and he was discharged from probation in July 1988. (Ex. 3; 7; Tr. 67-71.)

Applicant made a concerted effort to abstain from alcohol after the 1987 OUI, although he continued his second job at the officers' club. (Ex. 3; Tr. 71.) In May 1994, he and his spouse married, and they had a son in October 1994. Cancer was detected in the placenta, which led to unexpected surgery for his spouse, and his father died the night before his son was born. (Ex. 3; Tr. 71-72.) Applicant initially coped with the stress and grief without drinking, but he relapsed around 1995. (Tr. 73.)

Applicant struggled to remain sober on his own. He drank mostly beer after work on the weekends to relax and relieve stress caused by financial pressures. (Tr. 76.) He and his spouse had issues financing construction on their home. (Tr. 79-80.) In mid-February 1999, Applicant was involved in a one-car accident while driving home from his second job after a 16-hour work day. He was intoxicated after drinking at the officer's club and was charged with OUI. Convicted in March 1999, he was ordered to attend a 24-day alcohol education program and counseling; to pay OUI fines and fees of \$375; to serve on probation until March 2001, conditioned on no alcohol, random screens, and payment of probation supervision fees; and to surrender his license for 90 days. He fulfilled the conditions and was dismissed from probation in March 2001. (Ex. 3; 6.)

Applicant became involved in AA after the February 1999 OUI. He became secretary of an AA group that met on Sunday mornings, and he was abstinent from alcohol for at least two years. (Tr. 36, 83.) Around 2002, he learned that his spouse had been diagnosed with cancer for the second time. He began consuming a few drinks to relax before driving home from his second job. (Ex. 3; Tr. 84.)

On December 4, 2004, after putting in a full day for the defense contractor, Applicant drank two 16-ounce vodka cocktails while working a wedding at the officers' club. (Tr. 85.) Drowsy while driving home around midnight, he almost collided with a police car approaching in the other direction. Applicant failed a breathalyzer test, and he was charged with OUI, fifth offense, marked lanes violation, and failure to wear a seat belt. On December 13, 2004, he was released on an electronic bracelet for work purposes only, conditioned on abstinence from alcohol and illegal drugs, random screens, and no driving a motor vehicle. (Ex. 5.) When he had the opportunity to call home, Applicant's spouse informed him that it was time for him to own up to "all the wreckage." Applicant "hit bottom" when he heard his then 10-year-old son "crying, wondering when dad was going to come home." He resolved not to drink alcohol in the future. (Tr. 99.)

Under a plea agreement, he pleaded guilty in late October 2005 to an amended charge of OUI, second offense. He was sentenced to two years in the house of corrections, with 12 days to be served on the weekends and the remainder suspended for five years.

Applicant was placed on probation with electronic monitoring until October 26, 2010. (Tr. 94.) He was assessed OUI fines and fees totaling \$900, \$125 for the motor vehicle violations, and a probation fee of \$65 per month. Applicant was also ordered to complete a 14-day inpatient treatment program with follow-up, to submit to random alcohol and drug screens, to attend Alcoholics Anonymous (AA) with an approved sponsor or other 12-step program, and to complete 80 hours of community service. (Ex. 3; 5; 11.) Applicant's license was revoked for ten years by the registry of motor vehicles. (Ex. 2; Tr. 86.) He was allowed out of the house two or three days a week after 6:30 p.m., and he used his time to attend AA meetings. (Tr. 48.)

After his arrest for OUI in December 2004, Applicant resigned from his part-time employment at the officers' club (Ex. 3.), and he stopped drinking. (Ex. D.) On December 11, 2005, Applicant entered the court-mandated 14-day residential driving under the influence of liquor (DUIL) program, which consisted of a comprehensive substance abuse evaluation, individual and group counseling, alcohol and drug education, and self-help meetings. A screening test of December 19, 2005, was positive for a diagnosis of alcohol abuse. Applicant successfully completed the program and was discharged on December 24, 2005. It was recommended that he pursue counseling, not drink and drive, and attend two AA meetings weekly. A licensed alcohol and drug counselor (LADC) with the DUIL program assessed Applicant's risk of recidivism as high, but he opined that Applicant's prognosis should improve provided he remains sober and attends self-help meetings regularly. (Ex. B.) Applicant participated in a 26-week outpatient program, and he continued with individual counseling through at least May 2007. (Ex. 1.)

On May 8, 2007, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) from which a Questionnaire for Sensitive Positions (SF 86) was prepared. Applicant responded "Yes" to whether he had ever been charged with a felony, and he disclosed his December 2004 OUI. In response to question 25, concerning any alcohol-related treatment in the last seven years, he listed counseling from April 2005 to May 2007. (Ex. 1.)

Applicant was interviewed about his alcohol offenses on July 5, 2007 and November 19, 2007, by an authorized investigator for the Office of Personnel Management (OPM). During his initial interview, Applicant discussed a relapse around 1994 on learning of his spouse's cancer diagnosis and his December 2004 OUI. He expressed his belief that he does not have an alcohol problem, but that he is better off if he stays away from alcohol. He indicated that he began counseling in April 2005. Applicant denied any intent to use alcohol in the future, and he added that he was attending AA three times a week. In November 2007, Applicant was re-interviewed for the details of his earlier OUI offenses. He acknowledged that he had turned to alcohol for relaxation and stress relief and that he had been diagnosed with an alcohol problem. (Ex. 3.)

In response to DOHA interrogatories, Applicant indicated on June 5, 2008, that he did not intend to consume alcohol in the future and that he was attending AA three to four times a week. (Ex. 4.) Available documentation shows Applicant has attended on average between two and three AA meetings per week since June 2006, with some increase in the

frequency of his attendance to four or five meetings per week at times in 2009 and 2010. (Ex. A; Tr. 89.) Applicant has not consumed alcohol since December 2004.² (Tr. 90.) He now understands that he is an alcoholic. (Tr. 94-95.)

A fellow member of Applicant's AA home group, which meets on Thursday nights (Tr. 120.), has observed Applicant on commitments where Applicant shares his experience with alcohol and recovery. (Tr. 114-.) He sees Applicant at AA meetings at least five days a week. (Tr. 116.) Since they first met at an AA meeting in October 2009 (Tr. 115.), this AA member has observed Applicant make big strides in working on the emotional issues that accompany alcoholism. (Tr. 118-19.)

Over the past four years, Applicant has held an AA meeting on a regular basis for persons being treated on the detoxification unit of a substance abuse treatment facility. (Ex. A; Tr. 93-94.) Applicant's sponsor, who has over 16 years of sobriety, has observed Applicant take on the role of sponsoring others in the AA program. In this sponsor's opinion, Applicant has "built a solid commitment to himself and his family making his sobriety and recovery the main priority in his life." (Ex. E.) Applicant sees his sponsor at an AA meeting every Thursday and tries to talk with him daily. (Tr. 91-92.) Applicant also contacts another AA member, who regularly attends his Monday night meeting. This AA member runs an employee assistance program for a large corporation. Applicant also attends a Wednesday night step meeting when he is not going on a commitment. He has been through the AA steps twice and is re-working his moral inventory (step four). Applicant is still dealing with the issue of making amends to the person who abused him during his youth. (Tr. 96-97.) Applicant sponsors two people in AA, and his spouse is involved with Al-Anon. (Tr. 91-92.)

In mid to late December 2010, Applicant underwent a substance abuse evaluation by a local LADC with 20 years of experience in the substance abuse field. The LADC had two individual sessions with Applicant. He also spoke with Applicant's spouse and Applicant's AA sponsor by telephone. Applicant's spouse and his AA sponsor confirmed Applicant's active engagement in AA, reporting that Applicant attends regular meetings, contacts his sponsor, sponsors other recovering alcoholics, and has in-depth knowledge of the 12-step program. As reflected in his report of January 2, 2011, the LADC diagnosed Applicant with alcohol dependence in full, sustained remission (no signs of dependence or abuse in the past 12 months). He assessed Applicant's prognosis as "highly favorable." Applicant appeared to have made "the necessary changes in his lifestyle to sustain ongoing sobriety long into the future." (Ex. D.)

Applicant has never had an alcohol-related incident at work or been disciplined as a result of drinking. (Tr. 38-39.) In November 2010, he became eligible to regain his license for work purposes only. As of December 2010, he had not yet requested a hearing for the conditional reinstatement of his driver's license. (Tr. 86-87.)

² Applicant testified that he last consumed alcohol on December 7, 2004, the day of his OUI. (Tr. 90.) The court record reflects an offense date of December 4, 2004, although the complaint was not filed until December 6, 2004. (Ex. 5.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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 overarching adjudicative goal is a fair, impartial and commonsense 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. 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 to obtain 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

Alcohol Consumption

The 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 trustworthiness.”

Applicant’s August 1976 public drinking and August 1977 OUI arrests were alcohol-related incidents of the type contemplated in 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.” However, the evidence falls short of establishing that Applicant was intoxicated on either occasion.

Starting in the mid-1980s, Applicant turned to alcohol to cope with stressful circumstances in his life. His four OUI offenses, committed between April 1985 and December 2004, implicate AG ¶¶ 22(a) and 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.” AG ¶ 22(e), “evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program,” also applies. Applicant admitted to an OPM investigator in November 2007 that he had been diagnosed with an alcohol problem by clinicians affiliated with court-ordered counseling for his December 2004 OUI. A screening test administered to Applicant during the 14-day residential program in December 2005 was positive for a diagnosis of alcohol abuse. In addition, an LADC with 20 years of experience recently diagnosed Applicant with alcohol dependence in full, sustained remission.

AG ¶ 22(f), “relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program,” is not conclusively established. Although Applicant was ordered to attend a treatment program at a local hospital after his May 1987 OUI and to complete a 14-day alcohol education program and counseling after his February 1999 OUI, there is no record of a diagnosis in either case, and not enough is known about the treatment programs themselves to trigger AG ¶ 22(f). Nonetheless, the seriousness of Applicant’s alcohol problem is objectively shown by his relapses into drinking with OUI incidents after lengthy abstentions from late May 1987 to 1995 and 1999 to 2002, and in the case of his December 2004 OUI, after some exposure to AA.

Six years have passed since Applicant’s last OUI, but it is difficult 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,” given Applicant’s four OUI convictions. Concerning the potential applicability of AG ¶ 23(b), “the individual acknowledges his or her alcoholism or issues of 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 completed a second offender’s program after his April 1985 OUI, an alcohol safety action program after his May 1987 OUI, a 24-day alcohol program after his February 1999 OUI, and a 14-day inpatient DUI program with follow-up counseling after his December 2004 OUI. All of these programs were court-ordered and not voluntary. Furthermore, while he stopped drinking after his last OUI, he denied that he had an alcohol problem when he was interviewed in July 2007 by an OPM investigator. However, his sustained involvement with AA eventually helped him to accept that he is an alcoholic. He has fully applied himself to the AA program. He attends meetings regularly, goes on commitments frequently, works the 12-step program, has a six-year relationship with his sponsor, and even sponsors two AA members. Consistent with the AA program, Applicant intends not to consume any alcohol in the future, and there is no evidence of a relapse after he fully committed himself to his recovery. His ongoing affiliation with AA is evidence of actions taken to overcome his diagnosed alcohol dependency problem. Yet, for AG ¶ 23(b) to apply, the abstinence must be for sufficient time to clearly establish that Applicant’s trustworthiness and reliability are not subject to question. See ISCR Case No. 06-08708 (App. Bd. Dec. 17, 2007). While Applicant maintained abstinence for longer in the past (from May 1987 to around 1995) than his present six years, he did not have the support network in AA that he has had for at least the past four years. Largely because of the strength of his commitment to AA, as confirmed by both his AA sponsor (Ex. E), and the testimony of a fellow AA member (Tr. 114-19), his six years of abstinence is sufficient to apply AG ¶ 23(b).

Despite an assessed high risk of recidivism, Applicant was considered to have successfully completed the 14-day inpatient court-mandated DUI program in December 2005. By October 2010, he had fulfilled his sentence to where he was no longer on probation for his December 2004 OUI. With his six years of established abstinence and active affiliation with AA on a regular basis, Applicant had satisfied the treatment, abstinence, and self-help components of AG ¶ 23(d) as of his December 2010 hearing on his clearance eligibility, and was lacking only the favorable prognosis required. See AG ¶ 23(d) (stating, “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”). On January 2, 2011, an experienced LADC rendered his professional opinion that Applicant’s alcohol dependence was in full, sustained remission. He assessed Applicant’s prognosis for continued sobriety as “highly favorable,” in significant part because of Applicant’s dedication to AA. This clinician’s curriculum vitae was not provided, but his listed credentials show he is qualified to make a substance abuse prognosis. AG ¶ 23(d) is also implicated.

Satisfaction of any or all of the pertinent mitigating conditions is not outcome determinative, and Applicant’s record of repeated drunk-driving offenses is not easily overcome. That said, while not a recognized professional alcohol treatment program, AA appears to have given Applicant the support he needs to maintain sobriety, and perhaps

more importantly, an outlet to address the emotional issues of the childhood sexual abuse, the unfair settlement of his accident claim, and his spouse's cancer diagnoses. In the opinions of his sponsor, another AA attendee, and the LADC, who evaluated him in mid to late December 2010, Applicant has made the necessary changes in his attitude and lifestyle to sustain his sobriety. The Alcohol Consumption concerns are mitigated.

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 his conduct and all relevant 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant held a confidential-level security clearance without any adverse incidents when he was actively abusing alcohol. While this does not compel a favorable outcome, he is seen as less of a security risk now, given his sustained commitment to his recovery through his active involvement in AA since June 2006. He has regular contact with his sponsor and others in AA, who will continue to support him. Based on the evidence before me, it is clearly consistent with the national interest to continue Applicant's security clearance.

Formal Findings

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

Paragraph 1, Guideline G:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Elizabeth M. Matchinski
Administrative Judge