

objections, I accepted the documents as Exs. I-PP. The transcript (Tr.) of the proceeding was also received on September 17, 2010. The record was then closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant failed to meet his burden of mitigating security concerns related to alcohol consumption. Clearance denied.

Findings of Fact

Applicant is a 37-year-old employee of a defense contractor. He served in the U.S. military from 1994 until 2007. He has a high school diploma and has been attending college courses. He is married and has no children.

Applicant has had a longstanding issue with excessive alcohol abuse. He consumed alcohol, at times to excess and the point of intoxication, from about 1988 until November 2009. Applicant began drinking beer in high school, where he would consume up to about three beers per weekend.¹ His alcohol use increased dramatically when he joined the military. He relied on beer to help him fit in. In the service, he found hearty drinking to be as much a part of his unit's mentality as it had been in the blue collar environment in which he was raised.² Beer remained his beverage of choice. He grew into a "binge drinker," a level he intermittently maintained until his 2009 Driving While Intoxicated (DWI) charge.³ He sometimes arrived at work intoxicated, although his intoxication was the result of excessive drinking the night before, not of morning alcohol consumption. Over the years he has attended various alcohol treatment and counseling programs, but found most of them ineffective or repetitive. While his military career had many successes, it was equally marred by alcohol-related incidents, as described below.

In about November 1994, he received nonjudicial punishment for an alcohol-related incident while a student in a military program. The incident led to his release from the program and he was instructed to attend a Level II alcohol-abuse program the following year. He willingly referred himself to an alcohol-awareness class in about June 1998 and completed treatment with an aftercare program in about December 1998. He also completed an inpatient-outpatient treatment program at a military substance abuse rehabilitation center in about July 1999.

In the 2000s, Applicant was arrested in about October 2005 and charged with driving under the influence and failure to drive in a single lane. He pled guilty to the former charge and was sentenced to 60 hours of public service, completion of alcohol treatment, and fined. The charge for failure to drive in a single lane was dismissed. In March 2006, he received nonjudicial punishment for failure to obey a lawful order or regulation. He was ordered to serve 45 days extra duty, restriction for 45 days,

¹ Tr. 27. Applicant noted that at that point, three beers were enough to keep him "giddy."

² Tr. 19-20.

³ Tr. 29-30. Applicant was able, however, to maintain sobriety for extended periods of time when his assignments demanded it. See Tr. 62.

reduction in rate, forfeiture of one-half month's pay for two months, and instructed to receive Level 2.5 treatment for alcohol dependence. Applicant was treated for alcohol dependence at a military facility from approximately May 2006 through June 2006. He failed to complete that treatment due to his alcohol dependency or abuse, but he was retained by the military. In March 2007, Applicant received nonjudicial punishment for failure to obey order or regulation and disorderly conduct, drunkenness, for which he received restriction for 45 days. On May 7, 2007, Applicant was discharged from the U.S. military. His discharge was noted as honorable, but the narrative reason given for his discharge was alcohol rehabilitation failure. At the time, Applicant thought his discharge would help him face his drinking issues, but he returned home without a support system in place.⁴ When he started his current job, he thought he had his drinking under control. When he completed a security clearance application in February 2008, he was committed to not "mess this up" with alcohol problems.⁵

Most recently, Applicant was arrested in about May 2009 and charged with DWI, 1st. He was found guilty and sentenced to 180 days in jail (170 days suspended), his operator's license was suspended for 12 months, he was restricted to an ignition interlock, ordered to attend an alcohol safety program, and pay fines. The experience, including jail time, was horrific.⁶ He was ashamed and felt he let down both his employer and the friend who had recommended him for the job.⁷

Over Thanksgiving weekend in 2009, Applicant had his last alcoholic beverage. At the time, he consumed alcohol while nervous over the prospect of meeting his new wife's family for the first time.⁸ He drank alcohol and triggered his ignition interlock device, resulting in a probation violation and additional counseling.⁹

The November 2009 incident occasioned a turnaround in Applicant's life and in his understanding of some of the underlying problems affecting his attempts at sobriety. He did not want to selfishly disappoint his employer, wife, family, and himself through alcohol abuse. Applicant began a new 12-step program (90 In 90) which affected him positively, in a way Alcoholics Anonymous (AA) had not in the past.¹⁰ It has helped him self-analyze, reconnect with his faith, better understand AA, and face his issues with

⁴ Tr. 68-70.

⁵ Tr. 71.

⁶ Tr. 76.

⁷ Tr. 76-77.

⁸ Applicant's wife does not drink alcohol. See Tr. 97.

⁹ Tr. 83; Answer to the SOR, dated Jul. 15, 2010, at 3.

¹⁰ Tr. 86-88.

alcohol. He now understands abstinence is his only option.¹¹ He is working diligently to maintain this outlook.

In December 2009, while attending 90 In 90, Applicant was discharged from a 24-week DWI counseling program with a “good” prognosis. The clinical director, a Ph.D., noted: “Perhaps for the first time in his life, [Applicant] has begun to see that alcohol has had a negative impact on his life. He is wrestling with the thought of what permanent abstinence would mean, But, he is not rejecting the idea outright. He appears to realize that two DWIs is a wake up call for making major changes. . . .”¹² His probation and restriction for an ignition interlock device ended in June 2010.

At work, Applicant is a valued employee. In his November 2009 evaluation, he received scores ranging from 90 to 100 in various performance areas. In maintaining his sobriety, Applicant has the full support of his wife, brother, family, and friends. His father wrote that Applicant’s 2009 DWI arrest may have been a “blessing in disguise” because it has helped Applicant reassess his life and reconnect with his faith.¹³

Today, Applicant fully understands the need for a solid support system to help him maintain sobriety. He has that with his wife, family, recovery sponsor, a church-based recovery group, and AA, in which he has found new insights after completing the 90 In 90 program.¹⁴ He admits he is alcohol dependent.¹⁵ He has not had an alcoholic beverage since the November 2009 interlock device incident.¹⁶ He has replaced alcohol in his life with exercise, movies, church activities, and more focus on his marriage.¹⁷ When asked whether he planned to drink alcohol in the future, he stated, “Alcohol is not an option for me.”¹⁸ He also noted, “alcohol is not in my future.”¹⁹ He feels his marriage and support system, as well as his renewed “spirituality and . . . emotionality,” have prepared him to remain sober.²⁰

¹¹ *Id.*, Attachment, Personal Narrative.

¹² *Id.*, Attachment, Clinical Director’s Letter, dated Dec, 8, 2009.

¹³ Ex. J (Letter, dated Sep. 10, 2010).

¹⁴ Ex. C (Schedule); Tr. 90. Applicant’s AA attendance is comprised of regular AA meetings as well as two separate hour-long meetings with a specialized focus.

¹⁵ Tr. 91.

¹⁶ Tr. 89.

¹⁷ Tr. 98-99.

¹⁸ Tr. 92.

¹⁹ Tr. 95.

²⁰ Tr. 94.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the revised AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ²¹ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant. ²²

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). "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."²³ Any reasonable doubt about whether an applicant should be allowed access

²¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

²² ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

²³ *Id.*

to sensitive information must be resolved in favor of protecting such sensitive information.²⁴

Based upon consideration of the evidence, Guideline G (Alcohol Consumption) is the most pertinent to this case. Conditions pertaining to that AG that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Guideline G – Alcohol Consumption

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.²⁵ In this case, Applicant admits that he abused alcohol from 1988 through November 2009. His abuse marred his otherwise successful military career on multiple occasions. He failed to complete an alcohol program in 2006. He has gone to work still intoxicated from the previous evening's alcohol consumption. Applicant has been evaluated as alcohol dependent by a qualified medical facility. He has relapsed despite repeated alcohol treatments and programs. Applicant has received two convictions related to drinking while driving a motor vehicle. Such facts are sufficient to raise Alcohol Consumption Disqualifying Condition (AC DC) 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); AC DC AG ¶ 22(b) (alcohol-related incidents at work, such as reporting to work or duty in an intoxicated or impaired condition, drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent); AC DC 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); AC DC AG ¶ 22(d) (diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence); and AC DC AG ¶ 22(f) (relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program).

Applicant continued abusing alcohol through Thanksgiving weekend of 2009, less than a year ago. While the circumstances giving rise to that incident, meeting his in-laws for the first time, were unique, they are part of a pattern that has continued since 1988 and after his last DWI conviction. Although Applicant is now resolved to maintain sobriety and expresses himself with a clear display of understanding of his condition, he appears to have been similarly resolved to abstinence in May 2009, after his last DWI incident. Such facts obviate application of AC DC Mitigating Condition (AC MC) AG ¶ 23(a) (so much time has passed, or the behavior was so infrequent, or it

²⁴ *Id.*

²⁵ AG ¶ 21.

happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on individual's current reliability, trustworthiness, or good judgement).

Applicant admits he is alcohol dependent. He has articulated a well-chosen and clear plan for maintaining sobriety through formal and informal support systems. In describing his methods, he demonstrated a resolute intention to remain sober, but has yet to establish a pattern of either abstinence or responsible use since the November 2009 incident or the end of his probation in June 2010. Given his long-term abuse of alcohol, more time is necessary to demonstrate successful abstinence. Therefore, DC AC 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)) does not apply.

Applicant has repeatedly participated in alcohol counseling and treatment programs. He has relapsed after prior programs in the past, but not since his successful completion of the 2009 program, where he received a good prognosis from a qualified medical provider. However, he has completed slightly less than a year of sobriety, obviating applicability of AC MC AG ¶ 23(c) (the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress). Given the aforementioned facts, AC MC AG ¶ 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 meeting with [AA] or a similar organization and has received a favorable prognosis by a duly qualified or a licensed clinical social worker who is a staff member of a recognized treatment program) also does not apply.

Applicant is clearly sincere in his efforts to maintain sobriety. He fully appreciates the adverse consequences his alcohol abuse has had on his career and his life. He resolutely wants to remain abstinent. Given his longstanding alcohol issues and repeated relapses, however, more time is needed to establish a pattern of committed and successful sobriety. Alcohol consumption security concerns remain unmitigated.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An administrative judge should consider 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense 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, as well as the “whole-person” factors. Applicant is a 37-year-old man who served in the U.S. military for 13 years. He recently married a woman who does not approve of alcohol, thus providing a stabilizing influence. His entire family is supportive of his attempts to maintain sobriety. After the 90 In 90 program, Applicant now finds AA to be a significant source of support. Church abstinence programs and his faith help in his support, as does a reliable sponsor. He has turned to other activities to fill the void once filled with alcohol consumption, and he is a valued employee. Applicant fully appreciates the destructive nature alcohol has played on his career and on his life. He admits he is alcohol dependent. His current support network and programs, if fully utilized, should effectively help him maintain sobriety, given his recent self-assessment regarding the importance of his need to abstain from alcohol. It is clear that he has started to turn his life around. Given his personal history, he is to be commended for this achievement for, as Applicant noted, alcohol is no longer an option if he wants to remain healthy and enjoy his successes.

Despite Applicant’s highly credible testimony, his demonstrated contrition for his past alcohol abuse, and his expressed commitment to remain alcohol-free, he has maintained sobriety for less than one year. Moreover, his most recent DWI-related probation and removal of an ignition interlock device restriction only ended in June 2010. Given Applicant’s past relapses, more additional time is needed to fully demonstrate a successful pattern for maintaining sobriety. As noted above, any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security. In light of the facts in his case, and the brevity of his sobriety, alcohol consumption security concerns remain unmitigated. Clearance is denied.

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 H:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.k:	Against Applicant

Conclusion

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

ARTHUR E. MARSHALL, JR.
Administrative Judge