DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 09-08408
SSN:	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Marc G. Laverdiere, Esquire, Department Counsel
For Applicant: *Pro se*

November 30, 2010

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,[1] Applicant's clearance is denied.

On 7 July 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G.[2] Applicant timely answered the SOR, and requested a decision without hearing. DOHA assigned the case to me 2 November 2010. The record in this case closed 10 October 2010, the day Applicant's response to the FORM was due. Applicant did not respond to the FORM.

[1]Consisting of the File of Relevant Material (FORM), Items 1-16.

[2]DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

Findings of Fact

Applicant admitted the SOR allegations, stating in his defense (Item 4) only that "I will abstain from using alcohol and seek help for my alcohol abuse." He is a 52-year-old senior software engineer employed by a defense contractor since July 2008. He seeks to retain the clearance most recently renewed in March 2007 for his job with another defense contractor.

Applicant has a recent history of excessive alcohol consumption, punctuated by two alcohol-related incidents and several failed efforts at rehabilitation. He began drinking alcohol in 1974, when he was 16 and not yet legal drinking age. He described his drinking pattern as two beers per day (Item 13). The record does not show when his drinking became abusive, but the first recorded incident occurred in August 2008. Applicant was drunk, got into a fight with his wife, and threatened to kill himself. She called the police, who after observing his behavior, had him involuntarily admitted to a hospital.

The admitting doctor diagnosed Applicant with alcohol abuse and alcohol dependency, and noted that Applicant immediately began complaining about how this would effect his job and his security clearance (Item 14). The consulting psychiatrist assessed him with alcohol intoxication and suicidal ideation. She noted that his blood alcohol content (BAC) upon admission was .209%, and thought that his elevated liver function test was due to his alcohol consumption (Item 14, 15).

Applicant spent a week in the hospital, during which time he was angry and belligerent with the staff. He eventually acknowledged his alcoholism, and with pharmaceutical intervention, cooperated in developing a discharge plan. The plan included referral for dual diagnosis treatment (alcoholism and depression), consultation with a psychiatrist, medication management, and joint therapy with his wife. His discharge diagnosis was acute alcohol intoxication and alcoholism. The discharging doctor noted that his condition was improved, but made no prognosis (Item 14).

In October 2008, Applicant consulted a licensed clinical social worker (LCSW) as part of his discharge plan. She diagnosed him as alcohol dependent and suffering from depression. She quoted him as saying his chief complaint was "I've been drinking way too much," and he later acknowledged that he knew he must quit drinking. She referred him to a doctor for a medical evaluation of his depression, and recommended he attend 10 sessions with her and 90 Alcoholics Anonymous (AA) meetings in 90 days (Item 13).[3] He attended one more session with her. The record is silent on whether he went to all the AA meetings, or otherwise complied with his discharge plan. However, he continued to drink.

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[3]She also recommended that he attend a program called First Step, but he would not go because he did not like the interviewer.

In June 2009, police were sent to Applicant's residence (now in a different part of the state) to conduct a welfare check on Applicant. The police were sent because there was a call history at Applicant's address with one previous suicide attempt, and the police had just received an email report that Applicant wanted to harm himself. The email was from a person who was negotiating an on-line sale with Applicant.[4]

The police awakened Applicant from his nap, and noted that he appeared mildly intoxicated. There ensued a lengthy and contentious (on Applicant's part) discussion about whether he intended to hurt himself, drink himself into a stupor and kill himself, or submit to voluntary medical evaluation. During the discussion, Applicant drank a full bottle of wine. The police contacted Applicant's estranged wife, who informed them that she had received an email from Applicant earlier in the day in which he stated he wanted to die and was going to kill himself soon. The police tried unsuccessfully to get Applicant to agree to a medical evaluation. Applicant was willing to have his wife take him for a medical evaluation, but she was not able to get to Applicant until the next day.

The police considered Applicant to be in no condition to be left alone, so after consultation with the local magistrate and sheriff, the police obtained an emergency custody order (ECO) to take him to a nearby university hospital. Once in custody Applicant was even more contentious. He swore at the police, threatened them with bodily harm, and was generally disruptive on the way to the hospital. At the hospital, Applicant remained disruptive until given a sedative. After hearing the police officer's report of events, and their own observations of Applicant's behavior, county mental health representatives concluded that a temporary detention order (TDO) was necessary until Applicant could undergo a full psychiatric evaluation. University police obtained the TDO from the magistrate and Applicant was admitted to the hospital (Item 16).

Applicant was admitted to the hospital with a .380% BAC. He was combative, uncommunicative, and uncooperative—so much so that medical providers could not obtain any past medical history from him, and had to base treatment recommendations solely on the police report and their personal observations of Applicant's condition. While in the hospital, Applicant also threatened bodily harm to the nursing staff. He was concerned that his hospitalization would cost him his job. Applicant was detoxified, and at his TDO hearing the following day, the magistrate concluded (against the medical advice of the hospital staff) that there was no legal basis to continue to hold Applicant at the hospital. The hospital encouraged Applicant to remain, but he chose to be discharged against medical advice. His discharge diagnosis was alcohol intoxication, resolved and alcohol dependence (Item 11). The hospital referred Applicant for outpatient treatment, and made an appointment for him two days after his discharge, but it appears that Applicant did not go.

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[4]Applicant had been negotiating to buy a motorcycle he could not afford. He bought the motorcycle, then cancelled the sale, then felt guilty for cancelling the sale. He had been drinking.

Applicant disclosed this incident to his employer, and the employer apparently reported it to the government, because in early August 2009, Applicant completed a new clearance application (Item 5). Eight days later, he consulted an LCSW for outpatient treatment (Item 12). At his initial consultation on 12 August 2009, he reported that he was an alcoholic and suffered from depression. He specifically sought therapy to "get the Government off my back." He told the therapist, "I need to pass my security clearance" for his government contract job and thus needed to "look better." He saw the therapist for 10 weekly sessions between 12 August 2009 and 14 October 2009[5], when he was discharged because he was moving back to live with his wife. Applicant actively participated in therapy, and attempted to overcome the multiple defenses he raised to benefitting from the therapy. He had abstained from alcohol 2-3 weeks before starting therapy, and reached a total of 4-6 weeks abstinence. However, by 16 November 2009, he reported having resumed drinking almost every day, and was very defensive about discussing it in therapy. Applicant was discharged with a diagnosis of alcohol dependence. He committed to resuming therapy once he relocated, but there is no evidence that he did so.

Applicant fully cooperated with his latest background investigation. Indeed, he obtained the medical records referred to above and provided them to DOHA (Item 7-9). In addition to the treatments listed above, Applicant has seen other therapists from time to time for what he described as "get to know you" sessions (Item 5). He did not continue in therapy with these therapists. If he does not "click" with a therapist within two sessions or so, he does not go back. Applicant has also attended AA meetings over the years, but does not do so now because AA's goals do not coincide with his goals. He does not define what his goals are, but they appear to be aimed at "normal" alcohol consumption. He consumed alcohol as late as March 2010, and claims he was last intoxicated in June 2009. The record contains no work or character references.

Policies

The adjudicative guidelines (AG) list factors to evaluate a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense assessment of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline G (Alcohol Consumption).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case.

[5]However, there are session notes from only 8 of the 10 sessions.

Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.[6]

Analysis

The Government established a case for disqualification under Guideline G, demonstrating Applicant's two involuntary hospitalizations, multiple diagnoses of alcohol dependence, and incomplete efforts at rehabilitation.[7] On two occasions, in August 2008 and June 2009, Applicant got so drunk that he convinced his wife (twice), an unrelated third party, and two different police departments that he was serious when he made statements that he might kill himself. Although Applicant denies actually being suicidal, he admits having made statements that he was going to kill himself. His admission BACs of .209% and .380 % not only demonstrate binge drinking, but high tolerance for alcohol. Further, he was diagnosed as alcohol dependent during each hospitalization and the brief therapy he underwent after each hospitalization.[8] He resumed drinking after each hospitalization without coming close to completing an alcohol rehabilitation program.

Applicant failed to mitigate the security concerns. The record reveals no serious attempt by Applicant to deal with either his alcohol dependence or his depression, which is closely associated with his alcohol dependence. Further, Applicant meets none of the mitigating conditions under Guideline G. His alcohol abuse was recent, frequent (in the sense that the two hospitalizations bespeak regular drinking), and not under unusual circumstances.[9] The record contains no evidence of changed circumstances or insights that would augur well for Applicant to maintain his sobriety. Applicant remains focused

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[6]*See*, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

[7]¶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; . . . (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;

[8]¶22.(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence; (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;

[9]¶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;

only on keeping his job and clearance. He resisted hospitalization because of the negative effect it might have on both, and he pursued therapy only at the last minute to try to preserve both. Applicant cannot establish a pattern of abstinence because he continues to drink—conduct that belies any claim that he has acknowledged his alcohol dependence.[10] He is not participating in any treatment program, either for his alcohol dependence or depression, much less making satisfactory progress.[11] He has been diagnosed as alcohol dependent by several medical professionals and social workers, but has not stayed in any program long enough to complete it. Indeed the longest program he attended was 10 weeks, the last seven of which he spent avoiding questions about resuming abusive drinking. Consequently, he lacks the kind of program, track record, and prognosis that would demonstrate that his alcohol problems are behind him.[12] While AA is not the *sine qua non* of rehabilitation programs, Applicant has put nothing into place beyond wishful thinking and a desire to drink "normally." I cannot conclude Applicant is unlikely to abuse alcohol in the future. On the contrary, I consider it highly likely that he will abuse alcohol in the future. At a minimum, the Government established its security concerns and Applicant failed his burden of producing positive information. In addition, he provided no information to support a whole-person assessment that would overcome the Guideline G concerns. Accordingly, I resolve Guideline G against Applicant.

Formal Findings

Paragraph 1. Guideline G:	AGAINST APPLICANT
Subparagraphs a-f:	Against Applicant

[10]¶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);

[11]¶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;

[12]¶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, . . . 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.

Conclusion

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

JOHN GRATTAN METZ, JR
Administrative Judge