DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
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	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

06/18/2012

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant failed to mitigate the security concerns regarding his alcohol consumption. Eligibility for access to classified information is denied.

Statement of the Case

On December 27, 2011, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether his clearance should be granted, continued, denied, or revoked.

Applicant responded to the SOR on February 2, 2012, and requested a decision based on the written record. Based on the written request of Department Counsel, the

case was converted to a hearing proceeding in March 2012. The case was assigned to me on March 8, 2012. The case was scheduled for hearing on March 30, 2012, and rescheduled for hearing on May 8, 2012. A hearing was held on the rescheduled date. At the hearing, the Government's case consisted of six exhibits (GEs 1-6); Applicant relied on three witnesses (Including himself) and four exhibits (AE A-D). The transcript (Tr.) was received on May 16, 2012.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to afford him the opportunity to supplement the record with commemorative chips from Alcoholics Anonymous (AA). There being no objections, and for good cause shown, Applicant was granted seven days to supplement the record. The Government was afforded two days to respond.

Within the time permitted, Applicant furnished copies of his AA chips and character references. There being no objections from the Government, and for good cause shown, I admitted Applicant's submissions as AE E and F.

Summary of Pleadings

Under Guideline G, Applicant allegedly (a) consumed alcohol, at times to excess, beginning at approximately age 12, and continuing to at least January 2010; (b) abused alcohol and drugs since his 20s that resulted in his admission to MV hospital in 1995, where he was diagnosed with poly-drug dependence, methamphetamine, and cocaine, and assigned a guarded prognosis on discharge; (c) ceased AA/NA attendance and returned to drinking alcohol to excess, resulting in his need for further treatment and ensuing treatment in 2009 from BT facility (which he completed successfully); (d) returned to drinking despite his treatment that resulted in the need for hospital detoxification in November 2009; and (e) returned to drinking despite his treatment, resulting in the need for additional treatment by BT facility, and received a discharge from BT facility in March 2010 with an aftercare plan that prescribed 12-step meetings, a decision on a sober living environment and a move to the same, and encouragement to continue weekly individual therapy sessions for three to six months.

In his response to the SOR, Applicant admitted all of the allegations with explanations. He claimed long periods of sobriety between documented incidents and complications from prescribed medications for treating diabetes as mitigating considerations. He cited his renewed efforts to build a strong recovery network at home with his family and friends, his church membership, and his volunteering for community projects as proof of his continuing recovery.

Applicant also claimed continued recovery through his AA/NA participation and his church-sponsored recovery program, and from the group sessions he participates in during his periodic visits to BT facility. Applicant explained he is his family's sole supporter and needs his security clearance to remain a technician at his facility.

Findings of Fact

Applicant is a 51-year-old senior electronics technician for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background and alcohol history

Applicant married in May 1990. (GE 1) He has one child (age 20) from this marriage. Applicant earned college credits between 1987 and 1988, but no diploma. (GE 1) He has since completed 40 months of technical training. (GE 4) Applicant reports no military service. He has held a security clearance for over 20 years and has never committed any actions that would place U.S. national security interests in jeopardy. (Tr. 45-46)

Applicant was introduced to alcohol at the age of 12. (GE 4; Tr. 47) Most of his early drinking was limited to beer with friends, primarily on weekends. Sometimes they would drink to "get drunk." (GE 4; Tr. 47)

By the time Applicant reached the age of 34, he was drinking regularly to levels of intoxication and abusing drugs. (GEs 5 and 6; Tr. 50-51) Beginning in 1993, he used marijuana and cocaine on a regular basis and became addicted to cocaine. (GEs 5 and 6) He also used excessive amounts of non-prescribed amphetamines (one to two daily) that he obtained from a contact. (GE 5) He used these illegal drugs and non-prescribed amphetamines while holding a security clearance, which he omitted from his 2003 security clearance application out of fear of losing his job and clearance. (GEs 1, 5, and 6) He acknowledged his mistakes in using illegal drugs while holding a security clearance. (GE 6)

Applicant was arrested for DUI in April 1995 and taken to the nearest police station where he was subjected to breathalyzer and urinalysis testing (GE 5; Tr. 51-52) The urinalysis revealed amphetamines in his system. Following his DUI arrest, Applicant self-referred to MV (a local hospital) for partial hospital care in May 1995. (GE 6) Once admitted to MV's detoxification unit, he was diagnosed with poly-drug dependence: alcohol-methamphetamine-cocaine on the Axis 1 scale of the Diagnostic Statistical Manual-IV (American Psychiatric Association, 4th ed. 1994) (DSM-IV). (GEs 2-4) Identified psycho-social stressors on the Axis IV scale were job and family.

Applicant's MV medical records reveal he had a longstanding history of alcoholism dating back to his early 20s. (GE 4) He confirmed to hospital personnel he had been abusing hard liquor (i.e., 100 proof vodka and rum) on a daily basis, consuming "close to a fifth a day." (GE 4 at 1) He sought medical assistance "because his life is crumbling," and because of anxiety and depression. (GE 4) He confirmed, too, that he had experimented with marijuana, coke, and crystal methamphetamine in his 20s, sometimes resorting to binge use for three-to-four days. (GE 4) He exhibited poor

judgment, minimal insight, and affect appropriate for someone with suicidal ideation. (GE 4)

Applicant committed to only two days of his scheduled partial hospital program with MV hospital before he was discharged to outpatient meetings and therapy closer to home at his request. (GE 4) He indicated to hospital personnel that he was sufficiently recovered that he could continue with his own recovery with his own chosen sponsor. While in MV's brief inpatient care, he was treated daily with individual psychotherapy and medicated with Zoloft, Librium, and Desyrel for his depression symptoms. (GE 4) Medical records reveal that Applicant participated in his 12-step program and worked a rehabilitation program while an inpatient in MV's hospital facility. (GE 4) Applicant showed some improvement on discharge from his brief inpatient stay and was discharged with a guarded prognosis. (GE 4)

Following his partial hospital discharge from MV hospital in May 1995, Applicant continued with self-help meetings in his community with AA and obtained a temporary sponsor. (GE 4) He continued with MV hospital's outpatient services for several weeks and showed some improvement in his sober-coping skills and expanded his social support network. (Tr. 52-53) MV counselors introduced Applicant to an aftercare group.

Records reveal that Applicant appeared in court in September 1995 to answer to his DUI charges. (GE 5) He pleaded guilty to the charges and was fined $1,200 and ordered to complete 48 hours of community service and fulfill the requirements of 45-day court-mandated drug/alcohol program. (GE 5) Applicant assures he paid the fine and completed the community service and drug/alcohol program requirements imposed by the court. (GE 5; Tr. 32) Applicant's assurances are accepted as accurate.

In his 2004 interview with an investigator from the Office of Personnel Management (OPM), Applicant accepted responsibility for his actions and assured the investigator of his life changes and future intent to abstain from using illegal substances and abusing prescribed medications. (GE 5) After enjoying over four years of success with AA and self-imposed sobriety, Applicant returned to drinking and abusing alcohol. (Tr. 33, 54) In his 2004 OPM interview, he admitted to drinking while claiming he "never had a drinking problem." (GE 6) He told the agent he never felt guilty about the amount of alcohol he consumes, and no one had ever indicated he should seek counseling. (GE 5) Applicant minimized his alcohol history in this OPM interview and displayed a considerable amount of denial about his MV dependence diagnosis. (GE 5; Tr. 55)

In March 2009, Applicant self-referred to BT facility (a drug and alcohol rehabilitation facility) for detoxification. (GEs 2 and 3; Tr. 31-36, 55) He attributes his return to abusive drinking to pressures in his family life. His wife had been laid off and was unable to obtain work. He was also experiencing financial pressures and problems with his teenage daughter, a lack of faith, and failing health. (GEs 2 and 3) Records show that Applicant completed a 28-day inpatient treatment program with BT facility in April 2009. (GEs 2 and 4 and AE A) While in this inpatient program, he was treated by a Dr B. His treatment regimen included family counseling and prescribed medications from

Dr. B. (GE 2) He participated in an AA 12-step program for an indeterminate time following his inpatient discharge from BT facility and for several months was able to abstain from alcohol. (GE 2)

In November 2009, Applicant suffered an alcohol relapse after his wife was laid off from her job. (GE 2; Tr. 35) This unexpected loss of income created strains in his family finances (leading to a Chapter 7 bankruptcy petition for relief) and prompted episodes of depression and drinking. (GEs 2 and 4) Struggling with their finances, Applicant increased his drinking. In November 2009, he checked into a local hospital for three days of detoxification. (GE 4) Following his release from this detoxification center, he continued to abuse alcohol.

Unable to cease his abuse of alcohol, Applicant self-referred to BT in January 2010 for inpatient evaluation and treatment. (GE 4; Tr. 36) His admission records reveal that he spent $110 on alcohol the previous 30 days prior to his admission and never attended any AA meetings. He cited moderate problems with alcohol while consuming a pint of Vodka a day. (GE4) Facility personnel never accepted Applicant's characterizations of his drinking problem and wrote in his medical statements that such statements reflect "minimizing the actual amount that he is drinking." (GE 4)

When discussing his medical history with admitting BT staff in January 2010, Applicant also disclosed outpatient treatment for psychological problems within the previous five years. He reported experiencing serious depression, anxiety or tension, understanding issues, and troubles in controlling his emotions, and indicated he had been seeing a therapist within the past year who prescribed Prozac for his depression. (GE 4)

Based on the historical information provided his BT counselors, his treating mental health provider (Dr. C) assigned a diagnosis of alcohol dependence and major depressive disorder, recurrent, mild on the Axis I scale of the DSM-IV and a deferred diagnosis on the Axis II scale and recommended inpatient treatment. (GE 4; Tr. 62) His inpatient treatment regimen included psychiatric services in connection with administered medications designed to treat his co-occurring major depressive disorder. (GE 4)

While in BT's 70-day inpatient care, he was treated daily for individual psychotherapy and medicated with Zoloft, Librium, and Desyrel for his depression symptoms. (GE 4; Tr. 61-62) Medical records reveal that Applicant complied with the facility staff's treatment recommendations. While an inpatient in the BT facility he participated in a 12-step program, worked a rehabilitation program, and completed 70 days of inpatient treatment. (GE 4; Tr. 37-39, 61, 65)

Applicant was discharged from his 70-day inpatient stay with BT facility in March 2010 with an unchanged diagnosis. (GE 4 and AE B) As a part of his recommended aftercare program, Dr. C and his staff urged Applicant to attend 12-step meetings, decide on a sober living environment, and move into the same. (GE 4). He was encouraged to continue with his weekly individual psychotherapy sessions for three to six months.

Applicant's BT records do not contain a prognosis, and Applicant did not know what kind of prognosis his BT counselors assigned to him. (Tr. 62)

By the proofs presented, Applicant has continued with his AA meetings (three times a week for the first year and once a week thereafter), twice completed the 12 steps of his AA program, and retained his sobriety for approximately 26 months. (Tr. 57, 66) He earned chips from AA commemorating one and two years of sobriety, respectively (AE E), and he has participated regularly in his church-sponsored recovery programs. (Tr. 41-42, 58)

Periodically, Applicant has made visits to BT facility and spoken with his assigned clinical therapist. (AE C) It is not clear, though, whether he has continued with his individual psychotherapy sessions recommended by his BT counselors. Because Applicant has not furnished an updated diagnosis and prognosis to verify his recovery progress in connection with his alcohol and psychological issues, it is difficult to assess his overall clinical progress. Although, Applicant's family and church networks appear to be working well for him at this time.

Without a more thorough documented current assessment, opportunities to verify his progress to date and evaluate any recurrent risks of Applicant's abusing alcohol are considerably weakened. Applicant's prior acceptance of abstinence and current AA/church recovery commitments are encouraging and represent positive steps in his favor, but do not provide any firm indicia of his condition and prognosis for recovery.

Endorsements and character references

Applicant is well regarded by his church pastors, family, and close friends. Applicant's spouse expressed deep love and respect for Applicant and described her journey with him and her impressions of how he has endured with his alcohol disease. (Tr. 70) She stressed the positive changes she has observed in Applicant over the past two years. (Tr. 72-73) Applicant's pastor of outreach credited him with leadership roles in the church. (Tr. 76) Applicant and his spouse belong to the church's home fellowship and have been very active in the group's meetings. (Tr. 77) Absent, though, are endorsements from his AA sponsor, employer supervisors, and coworkers who have worked with him over the past 25 years.

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." These guidelines must be considered before deciding whether or not a security clearance should be granted,

continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c)

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(a) factors:

> (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 chances; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following adjudication policy concerns are pertinent herein:

Alcohol Consumption

The Concern: 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. AG ¶ 21.

Burden of Proof

Under the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove by substantial evidence any controverted facts alleged in the SOR; and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or his security worthiness through evidence of refutation, extenuation or mitigation of the Government's case. Because Executive Order 10865 requires that all security clearances be clearly consistent with the national interest, "security-clearance determinations should err, if they must, on the side of denials." *See Department of the Navy v. Egan,* 484 U.S. 518, 531 (1988). And because all security clearances must be clearly consistent with the national interest, the burden of persuasion must remain with the applicant.

Analysis

Applicant is a conscientious electronics technician for a defense contractor who presents with a considerable history of abusive drinking, diagnoses of alcohol dependency, and relapses following completed treatment programs. His most recent diagnosis identified both alcohol dependence and major depression as co-existing disorders in need of aftercare and follow-up therapy.

Applicant's rehabilitation efforts since his last BT discharge in March 2010 includes two years of sustained abstinence commemorated by a two-year chip and supported by his pastors and friends, but no indications of an identified sponsor, completed psychotherapy, or favorable prognosis. Principal security issues raised in this case center on Applicant's history of abusive drinking while holding a security clearance, longstanding diagnosed alcohol dependency, and a still-recent recovery period without a favorable diagnosis of record.

Applicant's recurrent problems with abusive drinking and alcohol dependency over a 30-year period raise major concerns over his risk of recurrent alcohol abuse. On the strength of the evidence presented, five disqualifying conditions (DC) of the AGs for alcohol consumption (AG ¶ 21) may be applied: DC ¶ 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," DC ¶ 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;" DC ¶ 22(d), "diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence," and DC ¶ 22(f), "relapse after

diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program."

Over the past 17 years, Applicant has been evaluated and treated on several occasions for alcohol dependence and emotional issues. Medical records document he was diagnosed for poly-substance dependence (drugs and alcohol) by a physician on the staff of MV hospital in 1995. Records also reveal that Applicant was diagnosed for alcohol dependence by a licensed medical professional on the staff of BT facility in 2009, and for co-occurring disorders (alcohol dependence and major depression) by another licensed medical professional affiliated with BT in 2010. Medical records covering his 2009 and 2010 inpatient stays do not contain prognoses for either disorder.

Because Applicant's reported depression diagnosis is treated as a co-occurring disorder on the Axis I scale of the DSM-IV, it cannot be disregarded or discounted when assessing Applicant's alcohol recurrence risks associated with his ongoing rehabilitation efforts. *See* ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)(citing ISCR Case No. 02-07218 at 3 (App. Bd. March 15, 2004)).

While Applicant has enjoyed some periods of sobriety between evaluations, he has relapsed on at least three occasions before completing his last inpatient treatment stay with BT facility in March 2010. Produced medical records do not include any evidence of post-discharge psychotherapy to address his co-disorders of alcohol dependence and depression, or updated prognosis to gauge his recovery progress and likelihood of sustained recovery. Corroborative support from work supervisors, coworkers, and his AA sponsor are also unavailable and difficult to assess.

When presented with evidence of multiple failed rehabilitation efforts and relapses, the Appeal Board has noted that recent periods of sustained abstinence must be balanced with considerations of prior dependency diagnoses and relapses after completing treatment programs. *Cf.* ISCR Case No. 94-1081 at 4-5 (App. Bd. Aug. 17, 1995). Recurrent abusive drinking following admissions for the treatment of alcohol dependency is a strong indicator of rehabilitative failure and a need for a substantial period of sustained sobriety.

Faced with both a serious history of recurrent drinking and depression episodes following treatment for co-occurring disorders (i.e., alcohol dependency and depression) and prognosis difficulties, an extended period of sustained abstinence backed by a positive prognosis assumes vital importance for Applicant's long-term recovery and security clearance eligibility. Safe predictions cannot be made without firm assurances from his treatment providers, sponsor, and persons close to him at work that he is currently at no cognizable risk of a relapse.

While Applicant's recent treatment efforts and commitments to a life of sobriety are encouraging, his time in recovery is still too short to absolve him of all reasonable risks of recurrence. With just a little over two years of elapsed time since Applicant's last episode of abusive drinking, and with diagnosed depression issues still not addressed

with any documented psychotherapy, it is still too soon to conclude that Applicant is in no danger of another relapse should an emotional crisis arise in his life.

Because of the absence of any known reliable prognosis to evaluate Applicant's capacity to safely sustain his abstinence for the foreseeable future without any cognizable risk of a relapse, limited application of MC ¶ 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," is available to Applicant. Partially applicable to Applicant's circumstances are MC ¶ 23(d), "the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous (AA) 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."

At this time, there is too little professional information about the current state of his alcohol and emotional disorders and prognosis for the future to warrant safe conclusions that he is not a recurrence risk. More details of Applicant's recovery are needed to facilitate reliable assessments of his recovery progress. In similar situations, the Appeal Board has expressed doubts about the ability to make safe, predictive judgments about an applicant's ability to avoid abusive drinking in the future without jeopardizing the national interest. *See* ISCR Case No. 06-17541 (App. Bd. Jan. 14, 2008); ISCR Case No. 04-10799 (App. Bd. Nov. 9, 2007); ISCR Case No. 05-16753 at 2-3 (App. Bd. Aug. 2, 2007); ISCR Case No. 04-07825 at 2-3 (App. Bd. Aug. 11, 2006).

Favorable prospects for the future are inextricably linked to Applicant's recurrent past and require further seasoning and additional professional assessments. Taking into account both Applicant's lengthy history of poly-substance abuse, diagnoses, and recurrent alcohol abuse in recent years, and corresponding lack of solid probative evidence of favorable prognoses, the applicable guidelines, and a whole-person assessment of his relapse risks in the foreseeable future, it is too soon to draw firm conclusions about his ability to avert recurrent alcohol abuse in the future.

Applicant's overall showing that his excessive drinking in the past is behind him and that he can be trusted to sustain his sobriety and avert any recurrent return to abusive drinking is not sufficient to enable him to meet his mitigation burden. While Applicant's counseling and sustained abstinence over the past two-plus years are encouraging, a whole-person assessment does not support approval of a security clearance at this time. Given the still relatively short time he has adhered to an abstinence regimen with the support of AA, his church, and his family, it is still too soon to make safe predictive judgments about Applicant's ability to withstand recurrent risks to resume drinking. Unfavorable conclusions warrant with respect to the allegations covered by the alcohol guideline of the SOR.

Formal Findings

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE G (ALCOHOL CONSUMPTION): AGAINST APPLICANT

Subparagraphs 1.a through 1.e: Against Applicant

Conclusions

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

Roger C. Wesley
Administrative Judge