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

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| In the matter of: | ) | |
| | ) | |
| REDACTED | ) | ISCR Case No. 16-03272 |
| | ) | |
| Applicant for Security Clearance | ) | |

## Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: Thomas Albin, Esq.

12/15/2017

## Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant consumed alcohol at times to excess. He was arrested for driving under the influence (DUI) in 1973 and for domestic assault and DUI in July 2014. He resumed drinking after alcohol-treatment programs in 1999, 2014, and 2015. Applicant has not consumed any alcohol since September 2016, and he is more committed to Alcoholics Anonymous (AA) than in the past. However, it is too soon to conclude that he will not again abuse alcohol. Clearance is denied.

## Statement of the Case

On December 4, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing a security concern under Guideline G, alcohol consumption, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for*

*Determining Eligibility for Access to Classified Information* effective within the DOD on September 1, 2006.

On December 20, 2016, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On March 2, 2017, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On April 19, 2017, I scheduled a hearing for May 23, 2017. On May 22, 2017, I had to continue the hearing because of medical reasons. On June 28, 2017, I rescheduled the hearing for July 31, 2017.

While this case was pending a hearing, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4 establishing the National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require national security eligibility or eligibility to hold a sensitive position. On May 18, 2017, I provided Applicant's counsel with a copy of the updated Directive incorporating the new AG which supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. I advised him that I would be adjudicating his client's security clearance eligibility under the new AG,[1] and that I would consider a request to leave the record open after the hearing for additional information if necessary in light of this change in the AG.

I convened the hearing as rescheduled on July 23, 2017. Three Government exhibits (GEs 1-3) and five Applicant exhibits (AEs A-E) were admitted into evidence without objection. Applicant, his spouse, and two of his co-workers testified, as reflected in a transcript (Tr.) received on August 7, 2017.

## Findings of Fact

The SOR alleges under Guideline G that Applicant consumed alcohol at times to excess and intoxication from 1999 to at least 2016 (SOR ¶ 1.a); that he was arrested for DUI in 1973 (SOR ¶ 1.b), and for domestic assault, disorderly conduct, and DUI in 2014 (SOR ¶ 1.c); [2] and that he continues to consume alcohol despite his history of alcohol abuse (SOR ¶ 1.d). Applicant admitted the allegations in SOR ¶¶ 1.a-1.c, but he denied SOR ¶ 1.d. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

[1] Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

[2] Applicant was alleged to have been arrested in the same state for driving under the influence (DUI) in 1973 and for DUI in 2014. With the repeal of the previous statute § 14-227, which made punishable driving while intoxicated, drunk driving has been punishable since 1963 under § 14-227(a), operation while under the influence of liquor or drug or while having an elevated blood alcohol content, which since 2002 is .08 % (from .10%) or higher. For commercial vehicle drivers, the elevated blood content is .04% or higher. The correct designation for the charge is OUI.

Applicant is a 62-year-old maintenance electrician. He has been married to his spouse since 1981, and they have three adult children and four grandchildren. (GEs 1-2; Tr. 42, 93-94.)

Applicant was arrested for DUI in April 1973, when he was a senior in high school. It was "senior skip day." After drinking with other students, he crashed his car into a tree. He was required to attend an alcohol education course, and he lost his driving privileges for six months. (GE 1; Tr. 49, 51.)

Applicant was first hired by his defense-contractor employer in 1974. He was laid off in 1975 but recalled in 1976. In 1980, he resigned and moved away. After two years working in the housing industry, he returned to his present area. He has been consistently employed by the defense contractor since September 1982. Applicant seeks to retain the DOD secret clearance that he has held since October 2000. He held a DOD confidential clearance from October 1993 until it was upgraded in 2000. (GEs 1-2; Tr. 40-41.)

Applicant has a history of abusive drinking, including up to six beers and a couple of shots of liquor per day. After his father died from cirrhosis of the liver, Applicant recognized that he had problems with alcohol at times. At the referral of his work employee assistance program (EAP), Applicant voluntarily admitted himself to a 30-day inpatient alcohol-treatment program in February 1999. (GE 1; Tr. 42-44, 67-68.)

Applicant successfully completed the alcohol-treatment program in March 1999, and he maintained abstinence for the next ten years with the assistance of AA. He began taking antidepressant medication in approximately 2005, although he did not always take it at the same time each day and missed some doses. (Tr. 78, 82.) Applicant stopped attending AA with any regularity after the death of his sponsor in 2008, and, without that support, he drank alcohol from time to time to intoxication starting around August 2009 to cope with the stress of his mother's recent death and his in-laws moving into his home. (Tr. 43-46, 83-84, 96.) By July 2014, he was consuming six beers and two or three shots of liquor per day. (GE 3; Tr. 68.)

In July 2014, Applicant was arrested for DUI, 3rd degree assault, and disorderly conduct involving violence or threat after consuming alcohol to the point of blackout. (GEs 2-3; AEs A-B.) Applicant stopped at a liquor store after work, and he had already consumed a couple of shots of liquor and two beers when a friend showed up and shared a pint of whisky with him. When Applicant arrived home, he grabbed and pushed his wife during an altercation. His spouse attested to incurring bruises on her arms and breasts. (Tr. 99.) She called the police from a neighbor's home. Applicant left to get something to eat, and he was stopped by the police. Applicant was jailed overnight. The police issued a restraining order against him for 30 days prohibiting him from contacting his spouse. (GE 3; (Tr. 46-47, 52-54. 98-99.) Applicant's spouse testified that the incident was "traumatic" for her but "totally out of [Applicant's] character." (Tr. 97, 105.)

Before his arraignment, Applicant began attending an evening intensive outpatient alcohol-treatment program in July 2014. Applicant was allowed to continue in the program

to satisfy a court order for 30 days of alcohol education, and he attended for about nine weeks to sometime in September 2014. He was also required to complete domestic-violence classes. The charges were dismissed on September 2, 2015, after he completed the alcohol and domestic-violence programs.[3] (GEs 2-3; AEs A-C; Tr. 47-48, 104.)

After his discharge from the outpatient alcohol program, Applicant attended AA sporadically, and he resumed drinking alcohol in October 2014 or November 2014. (GE 3; Tr. 85.) He "drank just enough to get the edge off." He continued to attend AA meetings "on and off," but was unable to stop drinking. (GE 3; Tr. 56, 72.) In February 2015, Applicant began counseling with a licensed alcohol and drug counselor (LADC). (GE 3; AE D.) At the referral of the LADC, Applicant voluntarily attended an inpatient alcohol-treatment program from mid-April 2015 to mid-May 2015. (Tr. 74.) Applicant was abstinent for approximately six weeks after his discharge from that program before resuming drinking when he had "issues." (Tr. 62.) As of a July 10, 2015 interview with an Office of Personnel Management (OPM) investigator, Applicant was consuming up to six beers and two or three shots of liquor over the course of a week. He was drinking to intoxication one to three times per month. (GE 3; Tr. 69, 72.) He drank in the afternoons after work but not around his wife. (Tr. 69-70.) During his interview, he expressed his belief that he had a problem with alcohol, but he was in counseling with the LADC, attending AA meetings, and hoping to eliminate alcohol gradually from his life. (GE 3.)

Applicant had last consumed alcohol on September 18, 2016. He was preparing an old truck for entry in a show and "felt really good about [himself] and so [he] thought [he] would—[he] would have a drink." He had recently started taking Antabuse and became ill from drinking. He felt guilty about drinking and considered it a "wake-up call." (Tr. 58-60.) Applicant's spouse has not observed any indications that would lead her to believe that he has consumed alcohol since September 18, 2016. (Tr. 108.)

Applicant was still attending individual counseling and group therapy with the LADC as of late July 2017. The LADC attests that Applicant has been compliant with his treatment in that he has continued to attend both individual and group therapy and takes his condition seriously. In the LADC's opinion, Applicant is stable and fit to maintain his defense-contractor position. (AE D.) Applicant was also taking an antidepressant medication and Antabuse. In approximately late June 2017, Applicant's spouse began monitoring his Antabuse use as a reminder for him to take it, although she and Applicant testified discrepantly about her involvement in his medication management. (Tr. 80-81, 109-110.) Applicant testified that she gives the Antabuse to him, that he takes it, and that she watches him take it. Applicant indicated that there were times when he had not taken his Antabuse and so his prescribing clinician suggested that it might make both Applicant and his spouse happy if he took it in front of his spouse. (Tr. 80-82.) Applicant's spouse

[3] The clinical records of his intensive outpatient program were not submitted in evidence. A general description of the program (AE C) indicates that clinicians formulate an individualized treatment plan on the first evening and while most people are in the program for approximately four weeks, more time in the program may be required. At a minimum, Applicant was required to attend nine hours of treatment per week, two 12-step meetings (either AA or NA), and submit to a urine screen once a week. Abstinence from alcohol and illegal drugs was expected.

testified that she asks Applicant if he takes his Antabuse every day and that she tries to remind him about taking it. He then shows her that he is taking his pill. She added that she has him take care of his own treatment. (Tr. 110-111.)

Applicant has attended AA three times a week or more often since September 2016. He obtained a new sponsor in 2015, and his sponsor has 34 years of sobriety. (Tr. 90.) Applicant has only been working on his recovery with his sponsor for the past year. (Tr. 85-86.) As of July 2017, Applicant was in contact with his sponsor daily. Applicant has been active in AA by helping at meetings and associating more with other AA attendees. (Tr. 87, 90.) Applicant intends to continue his counseling and AA attendance. (AE D; Tr. 56-61.) He knows alcohol can be problematic for him and that it is not a good thing. (Tr. 61.) As to whether he considers himself to be an alcoholic, Applicant testified, "Yes. I guess so." (Tr. 62.) He does not know for certain but surmises that he probably has been medically diagnosed as an alcoholic. (Tr. 63.) Applicant no longer associates with the same friends with whom he drank in the past. (Tr. 64.)

Applicant's sons were still living at home with him and his spouse as of late July 2017. Applicant's spouse has asked their sons not to have any alcohol in the house, and she believes they have complied with her request. (Tr. 115-116.) Applicant and his spouse had a social gathering at their home around July 4, 2017, with invitees bringing whatever they wanted to drink. Applicant's spouse had two alcohol drinks. To her knowledge, Applicant did not consume any alcohol. (Tr. 116.)

Applicant's direct supervisor for the past 17 years attests to Applicant being a hard worker and an asset to their department. Applicant has had no issues at work related to alcohol, and he has never acted improperly at work. (AE E.) Applicant's department manager has been familiar with Applicant's work for the past ten years. He likewise attests to Applicant's dependability and dedication. Applicant's work has been of high quality with no alcohol issues. He would like to see Applicant continue in his position until he retires. (Tr. 19-23.) Applicant's union president described Applicant as an outstanding electrician, who acquired a state contractor's license on his own. He has not seen any evidence of Applicant being impaired by alcohol at work. (Tr. 29-32.)

## 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 overall adjudicative goal is a fair, impartial, and

commonsense decision. According to AG ¶ 2(a), 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 national security eligibility will be resolved in favor of the 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of EO 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline G: Alcohol Consumption

The security concern for alcohol consumption is articulated 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 was required to complete an alcohol-education program after drinking alcohol to intoxication as a senior in high school in 1973. It qualifies as an alcohol-related incident of the type contemplated within disqualifying condition AG ¶ 22(a), which provides:

> (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 the frequency of an individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder.

Even so, it appears to be an isolated incident of poor judgment attributable to his youth and immaturity.

Of primary concern are Applicant's maladaptive use of alcohol around the late 1990s, which led him to obtain alcohol-rehabilitation treatment in 1999, and his serious relapse in 2009 after ten years of abstinence. Applicant turned to drinking to cope with stressful family situations. By July 2014, he was consuming six beers and two or three shots of liquor per day. After consuming alcohol to the point of blackout on July 15, 2014, he grabbed and struck his spouse and then drove a vehicle while impaired by alcohol. DUI and domestic violence charges were dismissed in September 2015 after he completed an intensive outpatient alcohol program and domestic-violence counseling. However, the incident establishes AG ¶ 22(a). Furthermore, Applicant's excessive drinking in 2014 culminating in the July 2014 blackout with OUI and domestic violence triggers AG ¶ 22(c), "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder."[4] He relapsed in October 2014 or November 2014 after completing an intensive outpatient treatment program in September 2014. He drank while taking Antabuse in September 2016 after completing another treatment program in May 2015.

Applicant appears to be a highly functioning alcoholic, who has not allowed his alcohol consumption to adversely affect his work. Yet, his anecdotal testimony that he was probably diagnosed as an alcoholic falls short of establishing AG ¶ 22(d), "diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder," or AG ¶ 22(f), "alcohol consumption, which is not in accordance with treatment recommendations after a diagnosis of alcohol use disorder." Nonetheless, Applicant's continued drinking after multiple treatment programs shows that he had a problem with alcohol.

Applicant was still drinking to intoxication as of July 2015. His drinking in contraindication to his Antabuse medication, while in ongoing counseling with an LADC, is recent evidence of maladaptive alcohol use that precludes favorable consideration of mitigating condition AG ¶ 23(a), which provides:

> (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.

Applicant cites his September 2016 consumption of alcohol, which precluded him from taking part in the car show, as a "wake-up call" for him. The unrebutted evidence is that he stopped drinking alcohol and began attending AA meetings at least three days per

[4] Although the term "binge" drinking is not defined in the Directive, the generally accepted definition of binge drinking for males is the consumption of five or more drinks in about two hours. This definition of binge drinking was approved by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) National Advisory Council in February 2004. *See* U.S. Dept. of Health and Human Services, NIAAA Newsletter 3 (Winter 2004 No. 3), http://www.pubs.niaaa.nih.gov/publications/Newsletter/ winter2004/NewsletterNumber3.pdf.

week. He has become more involved in AA and contacts his sponsor on a daily basis. Applicant's ongoing individual and group counseling with the LADC and his commitment to AA are positive actions taken to overcome his acknowledged alcohol abuse. However, AG ¶ 23(b) also requires a clear and established pattern of modified consumption or abstinence. It provides:

> (b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

As of his hearing, Applicant had only nine months of abstinence from alcohol. His abstinence is recent and brief when compared to the years over which he at times abused alcohol. The salient issue is whether his present counseling and commitment to AA are enough to guarantee that he will not again become complacent about his alcohol problem and resume maladaptive drinking. Applicant's treating LADC opined in May 2017 that Applicant is "stable and fit to maintain [his] position." Applicant presented nothing from his AA sponsor, who could possibly shed some light on the level of Applicant's commitment to AA over the past year. He would have had a stronger case in mitigation had he a favorable substance-use assessment by a qualified medical provider. Applicant has a history of not always taking his medication on time, and he and his spouse testified discrepantly about her involvement in monitoring his Antabuse medication. Applicant is credited with seeking treatment when he felt his drinking was excessive, but it is too soon to conclude whether his recovery will be sustained.

**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(d).[5] In making the overall commonsense determination required under AG ¶ 2(a), Applicant did not allow his alcohol consumption or the adverse legal consequences of his drinking to adversely affect his work. His department manager, his direct supervisor, and his union president all testified about Applicant's dedication and the high quality of his work.

At the same time, the Appeal Board has repeatedly held that the Government need not wait until an applicant mishandles or fails to safeguard classified information before

[5] The factors under AG ¶ 2(d) are as follows:

> (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.

denying or revoking security clearance eligibility. *See*, *e.g*., ISCR Case No. 08-09918 (App. Bd. Oct. 29, 2009, citing Adams v. Laird, 420 F.2d 230, 238-239 (D.C. Cir. 1969)). It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). At some future date, Applicant may be able to show reform for a sufficiently sustained period to safely conclude that his maladaptive use of alcohol is safely in the past. For the reasons discussed, it is premature to continue Applicant's security clearance eligibility.

## 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:

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| Paragraph 1, Guideline G: | AGAINST APPLICANT |
| | |
| Subparagraph 1.a: | Against Applicant |
| Subparagraph 1.b: | For Applicant |
| Subparagraphs 1.c-1.d: | Against Applicant |

## Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge