DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
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----------	)	ISCR Case No. 07-11921
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro Se*

May 21, 2008

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted his security clearance application (SF 86) on March 16, 2006. On January 28, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline G. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on February 14, 2008, and requested a decision based on the record without a hearing. On March 10, 2008, the government submitted a File of Relevant Material (FORM) consisting of seven exhibits (Items 1-7). DOHA forwarded a copy of the FORM to Applicant and instructed him to respond within 30 days of receipt. Applicant submitted a response dated April 18, 2008, to which the government had no objections. Applicant's response was accepted as his Exhibit A. On

April 29, 2008, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Based upon a review of the FORM, including Applicant's Answer to the SOR allegations (Item 3), and his rebuttal to the FORM (Ex. A), eligibility for access to classified information is denied.

Findings of Fact

DOHA alleged under Guideline G, alcohol consumption, that Applicant consumed alcohol at times to excess and intoxication from about 1990 to at least December 2007 and was continuing to drink (SOR ¶ 1.a), that he received outpatient treatment from May 2003 to October 2003 for diagnosed alcohol dependence (SOR ¶ 1.b), and that he was convicted three times of operating while intoxicated (OWI) offenses: in April 2003 (SOR ¶ 1.c), February 1998 (SOR ¶ 1.d), and October 1994 (SOR ¶ 1.e). Applicant admitted his three convictions for drunk driving, and that he had consumed alcohol at times to excess until his last offense in April 2003. He averred that since his last OWI, he had successfully completed an alcohol abuse treatment program and had not abused alcohol. He described his consumption of alcohol as rare, a glass or two of beer or wine with family or close friends.

After reviewing the evidence made available, I make the following findings of fact:

Applicant is a 31-year-old project manager who has worked for his present employer, a defense contractor, since November 1, 2007. From July 2004 to 2007, he worked as a financial analyst on several government programs, and it was during that employ that he applied for a security clearance. His current employer has requested that he be granted a clearance for his duties (Item 5, Item 6).

Applicant began drinking alcohol at about age 15. In October 1994, when he was 18, Applicant consumed several alcoholic beverages and then made "an extremely poor decision" to drive home from his friend's (Item 4, Item 6). Applicant was pulled over, to his belief because his vehicle matched the description of one involved in a hit-and-run earlier that day. The officer smelled alcohol on his breath and he was arrested for OWI. During a search of his vehicle incident to the arrest, the officer found suspected marijuana residue (seeds and stems). Applicant was charged with OWI, refusal, possession of drugs without a prescription, possession of drug paraphernalia, and hit and run—property damage only. Applicant pleaded guilty willfully to OWI, and reluctantly on the advice of a public defender to possession without a prescription. He denies he knowingly had any drugs or paraphernalia, and pleaded only because he had been told that the prosecutor would otherwise seek the maximum sentence on all charges. The drug paraphernalia and hit-and-run charges were dismissed. Applicant was sentenced to an alcohol/drug assessment, and a $629 fine or 25 days in jail. He also lost his license for one year (Item 4, Item 6). Applicant apparently completed treatment with some AA involvement in 1997, although the records of that treatment were not made available for review (Item 7).

In November 1997, Applicant started his own production and design business. In February 1998, Applicant was pulled over after drinking several alcoholic beverages at a tavern. He submitted to a breathalyzer and was arrested for OWI (repeater), and operating after revocation, first offense. He pleaded guilty and was fined $750 for the OWI and $95.50 for operating after revocation (Item 4, Item 6).

In September 1998, Applicant began attending a private university in his hometown. He continued to operate his business during his freshman year (Item 5). In December 1998, he was pulled over for speeding on the highway and arrested for operating after revocation/suspension. There is no evidence that alcohol was involved. The charge was dismissed, although he acknowledges he made an "extremely poor decision" by attempting to drive with a suspended license (Item 4, Item 6).

During the summer of 2000, Applicant worked in technical support at a local theater (Item 5). In August 2000, Applicant moved away to a distant state where he continued his undergraduate studies in political science and economics. He maintained a high grade point average but found the college environment conducive to drinking and his alcohol consumption increased ("I found myself gravitating and eventually adapting a lifestyle of alcohol abuse which included a lack of personal discipline and respect for authority." Item 6).

After he earned his bachelor's degree in late May 2002, Applicant returned to his home state where he returned to work as a technical director at the theater. In about November 2002, Applicant broke up with a girlfriend whom he had dated for over three years. His alcohol use increased to two to three days per week, two to eight beers per occasion (Item 6, Item 7). In late April 2003, Applicant consumed about five cocktails at his brother's apartment. En route home, he came upon a traffic stop and was approached by the officer who smelled alcohol on his breath. Applicant was arrested for OWI, 4th offense, and operating with a blood alcohol content of .10% or more (Item 7).[1] In June 2003, he was sentenced on the OWI to a $2,680 fine, 36 months loss of license, eight months in jail with credit for one day served with work privileges, and an alcohol and drug assessment. The blood alcohol content charge was dismissed (Item 4, Item 6).

On May 5, 2003, Applicant was evaluated by a certified social worker (CSW) who possessed alcohol and drug counselor certification. Applicant claimed sobriety for one year in 1997 with the assistance of a treatment program and Alcoholics Anonymous (AA), but acknowledged that his drinking had increased over the past six months. Applicant appeared to the CSW to be "struggling [with] the acceptance and surrender

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[1]Applicant indicated it was his fourth arrest for OWI (Item 4). When he was evaluated for alcohol problems in May 2003, he told the therapist evaluator that he had two drunk driving offenses in 1993 (Item 6, Item 7). Records reviewed by the government reported an arrest in October 1994 that Applicant does not deny. It is likely Applicant was mistaken about the date of his arrest. The government did not allege that Applicant had been arrested twice for drunk driving in the 1993/94 time frame, but records reviewing during its investigation of Applicant's background apparently confirmed the April 2003 OWI was Applicant's fourth drunk driving offense (tem 6).

process of his addiction," but he also verbalized a willingness to "stay clean and sober." The CSW rendered a diagnosis of alcohol dependency and recommended an intensive outpatient program, including individual and group therapy sessions. Applicant agreed to a treatment plan with a goal of developing and maintaining an alcohol-free lifestyle (Item 6, Item 7).

On May 14, 2003, Applicant underwent an assessment for impaired drivers. A counselor diagnosed him as suffering from alcohol dependency in remission, with a recurrent drinking pattern and moderately advanced chronicity. He was required to comply with a driver safety plan order as a condition to licensing. Under the plan, Applicant was to complete an outpatient program, attend a victim impact panel in July 2003, and maintain sobriety (Item 6, Item 7).

Applicant received treatment in a four month two-phase outpatient program from May 19, 2003, to October 6, 2003. He attended individual sessions once weekly and group therapy sessions twice weekly plus AA meetings. During a group session of June 9, 2003, Applicant exhibited denial of his drinking problem, hoping he would be able to resume drinking after he got his life together. On August 27, 2003, he verbalized a commitment to long-term sobriety. Having met his treatment goals, Applicant was discharged on October 6, 2003, with a good prognosis provided he continued with AA at least once a week (Item 6).

Following his treatment, Applicant vowed to not abuse alcohol, to pursue a professional career, and to take care of himself "mentally, physically, and emotionally." After completing the terms of his sentence for the OWI, Applicant moved away in February 2004 to "start a new life." After a brief stay with an aunt, he moved to his present area, and in July 2004 started working as an associate business consultant for a federal contractor (Item 5, Item 6).

Applicant supported several federal clients, including a naval command for which he needed a security clearance (Item 6). On November 19, 2004, Applicant completed a SF 86, re-signed on March 16, 2006, on which he disclosed two convictions for OWI, in February 1997 [sic] and April 2003, and one conviction in January 2000 [sic] for driving after revocation. He listed counseling from June 2003 to October 2003 in response to question 30 concerning whether his use of alcohol had resulted in any alcohol-related treatment or counseling in the last seven years, and explained:

> I sought out counseling in May 2003 to address alcohol problem. I successfully completed an outpatient treatment program that was designed to address the impact of alcohol use/abuse and to promote a lifestyle change. This outpatient program consisted of one-on-one and group counseling sessions (Item 5).

In February 2005, the naval command recognized Applicant's outstanding performance for his project management support on a multimillion dollar capital investment program for the command's installations and equipment office. Applicant's

contributions were described as "comprehensive, complete, and accurate," and he was considered to be an "invaluable asset" (Item 6). Applicant was given an achievement award by his employer for exemplary performance in serving the company and its clients (Item 6).

In October 2007, Applicant completed a contractual obligation supporting a government agency's office of information technology. His duties had included the development and analysis of investment data (portfolio management support). His employer chose not to bid on a "re-compete" task order. On November 1, 2007, Applicant went to work for his present employer who had successfully bid for the contract. Applicant continued to support the same client on the same task order (Item 6, Ex. A).

In response to interrogatories from DOHA concerning, in part, his alcohol use, offenses, and treatment, Applicant indicated on December 14, 2007, that he was currently consuming alcohol, a glass or two of beer or wine on occasion. He affirmed his intent to continue to drink "on rare occasion." Applicant indicated that he had received alcohol abuse counseling from May 2003 to October 2003. He also attended AA from May 2003 to November 2003 five times per week but was not currently involved. As for his future intentions of any AA, he indicated, "Maybe, on occasion." Applicant provided further detail about his drinking, stating in part:

> As part of my treatment program and personal regular personal inventory, I have learned to identify behavioral and situational triggers that have led to past alcohol abuse and have developed the coping skills to abstain from consuming alcohol in all but rare situations where I consume a glass or two of beer or wine with family/close friends. These occasions are limited, do not result in intoxication, and never occur when I will be driving or have any obligations/responsibilities to attend to.
>
> The frequency of my occasional consumption of alcoholic beverages is not patterned. Sometimes I will consume a beer or wine beverage once or twice a month. Other times I will not consume any alcohol for several weeks or months at a time. I will consume, at most, one or two alcoholic beverages per occasion.

In describing his OWI offenses, Applicant acknowledged he had "made an extremely poor decision" in each instance. As evidence of the personal changes he had made since his treatment in 2003, Applicant volunteered that he had purchased his present residence in August 2006, paid off debt accumulated while in college, and was maintaining a sober lifestyle ("I no longer associate with people that abuse alcohol and spend my time outside of my professional career working on my house, exercising regularly, and reading."). Applicant expressed his "sincere intention and desire to continue to maintain and improve [his] current lifestyle as well as further [his] career in support of the Federal government." He was hoping to begin master's degree studies on a part-time basis (Item 4, Item 6, Ex. A).

In rebuttal to the government's FORM, Applicant indicated on April 17, 2008, that he has not had a relapse since he changed his lifestyle nearly five years ago. He expressed his understanding of the personal and professional integrity required of a security clearance and his confidence that he would continue to maintain the integrity and professionalism required (Ex. A).

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline G, Alcohol Consumption

The security concern relating to the guideline for alcohol consumption is set out in AG ¶ 21: "Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and untrustworthiness." Applicant had his first drink at age 15. The record before me for review contains little detail about his consumption in terms of frequency or quantity. Applicant does not deny, however, and his OWI convictions confirm, that he abused alcohol on repeated occasions until his most recent arrest in April 2003. His drunk driving offenses raise security concerns under 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"). When evaluated for possible treatment after the OWI, he told a CSW that his drinking had escalated to two to eight beers two to three times a week in the previous six months. Presumably, this level of drinking and the OWI offenses are what led the CSW to diagnose him as alcohol dependent, and because of that diagnosis AG ¶ 22(e) ("evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program") also applies. Yet, while consumption of eight beers over a limited time period can reasonably be considered binge drinking, it is not clear how often or over how many hours Applicant drank as many as eight beers. 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") has limited applicability in this case.

To Applicant's credit, he obtained an alcohol assessment after his April 2003 OWI but before he was sentenced. He completed the intensive outpatient counseling program in October 2003 with a good prognosis, albeit one conditioned on continued AA. He moved away from the environment and persons conducive to abusive drinking, and over the past five years established a record of sobriety and significant professional accomplishment. While taking the position that the mitigating evidence "arguably supports" application of AG ¶¶ 23(a), 23(b), and 23(d), Department Counsel contends Applicant has not met his burden of mitigation, citing Applicant's struggles with accepting his problem, his failure to attend AA at present, and his continued drinking.

Applicant makes a credible case for application of AG ¶ 23(a) ("so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment"), given the absence of any

indication of intoxication or alcohol-related impairment since the April 2003 OWI. Yet, because he was diagnosed with alcohol dependency in 2003, the passage of time alone is not enough to guarantee against a relapse (*see* 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") and 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 meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized treatment program"). The successful completion of outpatient counseling and his frequent attendance at AA in 2003 satisfy the treatment requirements set out in AG ¶¶ 23(b) and 23(d). The lifestyle changes Applicant has made since his treatment indicate some recognition on his part that alcohol was causing him a problem, which is required under AG ¶ 23(b) and is a precondition for a finding of successful completion of a treatment program under AG ¶ 23(d). Progress notes reflect that as of June 11, 2003, he continued to deny his problem, but by mid-August 2003, he was focused on his sobriety. His alcohol dependence was in remission as of October 2003.

Applicant was given a good prognosis on his discharge from the outpatient program in October 2003, provided he continued with AA once weekly. He went to AA meetings for only about a month or so after his discharge. At the same time, he made significant lifestyle changes (geographic relocation, dissociation with the persons and employment that contributed to his abusive drinking, pursuit of a professional career) that could support a favorable prognosis but have not been clinically evaluated.

Under AG ¶ 23(b), a "pattern of abstinence" is also required for mitigation of diagnosed alcohol dependency. AG ¶ 23(d) requires "a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations." Consistent application of the Guideline G conditions leads me to conclude that Applicant be required to demonstrate an established pattern of abstinence for either AG ¶ 23(b) or 23(d) to fully apply. What is known of Applicant's recent drinking is that after "a sustained period of sobriety" (Item 6), he resumed drinking sometime before December 2007, albeit in quantity of no more than one or two glasses of beer or wine in no set pattern.[2] On May 5, 2003, he signed a treatment plan that had a stated goal of developing and maintaining an alcohol-free lifestyle. While he had achieved that goal as of October 2003 (*see* Item 6) his drinking even in moderate amount at present would appear to be inconsistent with that goal. So while Applicant has shown good judgment in completing the outpatient treatment program, AG ¶ 23(b) and 23(d) are only partly applicable. The remaining mitigating condition, AG ¶ 23(c) ("the individual is a current

[2]In December 2007, Applicant indicated that he sometimes consumed beer or wine (no more than one or two per occasion) once or twice a month. Yet at other times, he did not drink for several weeks or months at a time (Item 4).

employee who is participating in counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress") does not apply on its face since Applicant is not currently in treatment. There is also some indication in the record that Applicant had prior treatment in 1997, which would make AG ¶23(c) inapplicable.

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 the Applicant's conduct and all the circumstances. The 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 eligibility for 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. Applicant's repeated drunk driving (at least three if not four incidents) raises very serious doubts for his judgment and ability to comply with rules and regulations. His first OWI offenses were committed before he turned 22, but his last OWI cannot reasonably be attributed to immaturity. While he did not allow his alcohol use to affect his studies in college, he turned to alcohol in late 2002 to cope with the breakup of a longtime dating relationship. After his last OWI in April 2003, he successfully completed an intensive outpatient rehabilitation program and starting in February 2004, made several lifestyle changes. He moved away from his old environment and found challenging professional employment in which he has excelled. As evidence of the maturity that comes with age, he paid off the credit card debt accumulated in college and took on the financial responsibility of home ownership. He hopes to pursue his master's degree part-time while continuing his contractor employment.

However, he was assessed by two different counselors in May 2003 and diagnosed not with alcohol abuse, but with the more serious problem of alcohol dependence. A desire to resume drinking was viewed by his group counselor in June 2003 as evidence of ongoing denial of his problem. Without a recent clinical evaluation indicating that he was misdiagnosed in 2003 or that he does not risk a relapse by continuing to drink, I am unable to conclude that it is clearly consistent with the national interest to grant him access.

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 G:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant[3]
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant

Conclusion

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

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ELIZABETH M. MATCHINSKI
Administrative Judge

[3]Treatment is viewed favorably, but the allegation is resolved against him because his ongoing consumption is contrary to his treatment goal.