

KEYWORD: Alcohol; Criminal Conduct

DIGEST: Applicant has a history of excessive consumption of alcohol, which includes six alcohol-related incidents when he was arrested and charged with drunk driving. His most recent offense occurred in August 2005. He has reduced his consumption of alcohol, but he continues to drink about once a week. Applicant did not present sufficient evidence to explain, extenuate, or mitigate the security concerns. Eligibility for a security clearance is denied.

CASENO: 06-26662.h1

DATE: 08/30/2007

DATE: August 30, 2007

In re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 06-26662
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
MICHAEL H. LEONARD**

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

_____Applicant has a history of excessive consumption of alcohol, which includes six alcohol-related incidents when he was arrested and charged with drunk driving. His most recent offense occurred in August 2005. He has reduced his consumption of alcohol, but he continues to drink about once a week. Applicant did not present sufficient evidence to explain, extenuate, or mitigate the security concerns. Eligibility for a security clearance is denied.

STATEMENT OF THE CASE

Applicant contests the Defense Department's intent to deny his eligibility for a security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant on April 27, 2007. The SOR—which is equivalent to an administrative complaint—details the factual basis for the action and alleges security concerns under Guideline G for alcohol consumption and Guideline J for criminal conduct.

In addition to the Directive, this case is brought under the revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Revised Guidelines) approved by the President on December 29, 2005. The Revised Guidelines were then modified by the Defense Department, effective September 1, 2006. They supersede or replace the guidelines published in Enclosure 2 to the Directive. They apply to all adjudications and other determinations where an SOR has been issued on September 1, 2006, or thereafter.² The Directive is pending formal amendment. The Revised Guidelines apply here because the SOR is dated after the effective date.

On May 15, 2007, Applicant replied to the SOR and requested a hearing. The case was assigned for hearing on July 9, 2007. The hearing took place as scheduled on August 14, 2007. At hearing, the SOR was amended, without objections, in two ways:

- Subparagraph 1.m was added to Guideline G as follows—In August 2005, you were arrested for DUI in [county], [state]. You entered a plea of guilty.
- Subparagraph 2.a under Guideline J was amended to include a reference to subparagraph 1.m.

DOHA received the hearing transcript on August 22, 2007.

FINDINGS OF FACT

¹ Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended (Directive).

² See Memorandum from the Under Secretary of Defense for Intelligence, dated August 30, 2006, Subject: Implementation of Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (December 29, 2005).

Applicant admitted all allegations under Guideline G. He did not respond to the sole allegation under Guideline J, which refers to the criminal conduct (drunk driving) alleged under Guideline G. Based on the record evidence as a whole, the following facts are established.

Applicant is a 46-year-old production technician with an associate's degree awarded by a technical institute. He has worked for his current employer since September 2005. His work involves assembling and testing equipment for military weapons. He has never married and he has no children. He loves his job, describes himself as a hard-working employee who is treated with respect by the company, and he desires to continue his employment with the benefit of a security clearance.

In August 2005, Applicant was arrested and charged with his sixth drunk-driving offense. His history of drinking-and-driving includes arrests and charges for driving under the influence (DUI) in 1988, 1992, 1994, 1999, 2004, and 2005. For the 2004 incident, he was convicted of reckless driving; otherwise, he was convicted of DUI. The most recent incident in August 2005 was resolved by a plea agreement wherein Applicant pleaded guilty to the DUI offense. The outcome was Applicant driver's license was suspended for six months, and he was ordered to receive alcohol treatment, serve community service, and serve probation.

He has a valid driver's license issued by his state of residence (R. 48–50). It was issued in February 2004, and it has an expiration date of December 2009. Also, it reflects that an ignition-interlock device was imposed on him until February 27, 2007. This condition, now expired, stemmed from his August 2005 DUI offense.

His history of drinking alcohol includes alcohol counseling and treatment in 1993, 1995, and 2005. During the 1993 counseling or treatment, he was assessed as suffering from mild alcohol dependence, but the qualifications of the person who made that assessment are unclear. He has continued to consume alcohol since his 1998 arrest to present. He reduced his level of consumption after his arrest in August 2005. He now limits his beer drinking to one day per week when he is at home working around the house and yard. He intends to continue drinking alcohol at his current level. He does not participate in Alcoholics Anonymous or a similar group or organization. He has developed a relationship with God that he practices by talking to God like he would speak with a friend. This has helped him to reduce his level of drinking. Other than his testimony, Applicant did not present any other evidence.

GENERAL PRINCIPLES OF LAW AND POLICIES

No one has a right to a security clearance.³ As noted by the Supreme Court in *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁴ A favorable decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret

³ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (“It is likewise plain that there is no ‘right’ to a security clearance, so that full-scale due process standards do not apply to cases such as Duane’s.”).

⁴ *Egan*, 484 U.S. at 531.

information.⁵ An unfavorable decision: (1) denies any application; (2) revokes any existing security clearance; and (3) prevents access to classified information at any level and retention of any existing security clearance.⁶ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁷ The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.⁸ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁰ In *Egan*, the Supreme Court said that the burden of proof is less than the preponderance of the evidence.¹¹ The agency appellate authority has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹²

The Revised Guidelines set forth adjudicative guidelines to consider when evaluating a person's security clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based upon consideration of all the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept. A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.¹³ Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting eligibility for a security clearance.

CONCLUSIONS

Because the alcohol consumption and criminal conduct allegations in the SOR are factually interrelated, they are discussed together. The government contends that Applicant's history of

⁵ Directive, ¶ 3.2.

⁶ Directive, ¶ 3.2.

⁷ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

⁸ Directive, Enclosure 3, ¶ E3.1.14.

⁹ Directive, Enclosure 3, ¶ E3.1.15.

¹⁰ Directive, Enclosure 3, ¶ E3.1.15.

¹¹ *Egan*, 484 U.S. at 531.

¹² ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹³ Executive Order 10865, § 7.

alcohol consumption and alcohol-related incidents raises security concerns under Guidelines G and J. Applicant concedes his past mistakes, but contends that he is not a bad person and that he would never reveal classified information. The question is whether Applicant's history of alcohol consumption and drunk-driving offenses, the most recent of which was August 2005, is consistent with eligibility for access to classified information under the clearly-consistent standard.

The general concern under Guideline G is that excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses. It can raise questions about an individual's reliability and trustworthiness.¹⁴ Under Guideline J, criminal conduct is a security concern because criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. It calls into question a person's ability or willingness to comply with laws, rules, and regulations.¹⁵

Here, based on the record evidence as a whole, security concerns are raised under Guidelines G and J. The record evidence shows Applicant has a history of excessive alcohol consumption and alcohol-related incidents. His drinking-and-driving resulted in six arrests and five convictions for DUI. His most recent DUI offense occurred in 2005. The evidence reveals a firmly ingrained pattern of drinking-and-driving despite adverse legal consequences as well as alcohol counseling and treatment. His history of excessive alcohol consumption and alcohol-related incidents raises security concerns under the applicable DCs of the guidelines.¹⁶

All of the MCs under both guidelines have been given due consideration and none apply in Applicant's favor. He has a well-established history of alcohol-related incidents and alcohol counseling or treatment, and he continues to drink alcohol at least once a week. Given these circumstances, it is too soon to tell if Applicant will establish a pattern of responsible alcohol use that does not result in yet another alcohol-related incident.

In addition, this case has been considered in light of the whole-person concept and that analysis does not support a favorable decision. Based on the record evidence as a whole, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the alcohol consumption and criminal conduct security concerns. Likewise, he has not met his ultimate burden of persuasion to obtain a favorable clearance decision.

FORMAL FINDINGS

____ SOR ¶ 1–Guideline G:

Against Applicant

¹⁴ Revised Guidelines at 15–16 (setting forth the disqualifying and mitigating conditions).

¹⁵ Revised Guidelines at 21–22 (setting forth the disqualifying and mitigating conditions).

¹⁶Guideline G DC 1 (“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”); Guideline G DC 3 (“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”); and Guideline J DC 1 (“a single serious crime or multiple lesser offenses”).

