

KEYWORD: Alcohol; Drugs; Financial

DIGEST: Applicant has drunk-driving convictions in 1989 and 2005, and he continues to drink alcohol. He has a history of financial problems, including a defaulted student loan. He has not presented sufficient information to explain, extenuate, or mitigate the combined effect of the alcohol consumption and financial considerations security concerns. Clearance is denied.

CASENO: 06-14696.h1

DATE: 04/27/2007

DATE: April 27, 2007

In re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 06-14696
)	
Applicant for Security Clearance)	
)	

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

APPEARANCES

FOR GOVERNMENT

James F. Duffy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

_____ Applicant has drunk-driving convictions in 1989 and 2005, and he continues to drink alcohol. He has a history of financial problems, including a defaulted student loan. He has not presented sufficient information to explain, extenuate, or mitigate the combined effect of the alcohol consumption and financial considerations security concerns. Clearance is denied.

STATEMENT OF THE CASE

Applicant contests the Defense Department's intent to deny or revoke 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 December 8, 2006. 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, Guideline H for drug involvement, and Guideline F for financial considerations. Applicant timely replied to the SOR and requested a hearing.

In addition to the Directive, this case is brought under the revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information 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 and Appendix 8 to DoD Regulation 5200.2-R, and they apply to all adjudications and other determinations where an SOR has been issued on September 1, 2006, or thereafter.² They apply to this case because the SOR is dated December 8, 2006. Both the Directive and the Regulation are pending formal amendment. At the hearing, Applicant acknowledged that the revised guidelines would apply to his case (R. 13).

The case was assigned to me January 26, 2007. A notice of hearing was issued scheduling the hearing for March 7, 2007. The hearing took place as scheduled. DOHA received the hearing transcript March 15, 2007.

At Applicant's request, the record was kept open until March 23, 2007, to allow him to submit additional documentary evidence. He submitted several matters in a timely manner and those matters were forwarded to me by department counsel who voiced no objections. His multi-part submission, as described in the forwarding document, is admitted as Exhibit C.

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 admits the SOR allegations, and his admissions are incorporated herein. I make the following findings of fact set forth below in numbered paragraphs.

1. Applicant is a 39-year-old senior analyst whose day-to-day duties involve network-server management. He earned an associate's degree in applied science and electronics in 1995. He has worked for his current employer since March 2004. His annual salary is about \$50,000. Applicant is unmarried and has no children. He is seeking a DoD security clearance for the first time, and he completed a security-clearance application in November 2004 (Exhibit 1).

2. Applicant has a history of financial problems. As part of the background investigation, a credit report was obtained in December 2004 (Exhibit 4). The public record section of the report revealed one satisfied judgment for \$677 and one unpaid judgment for \$676. The trade section of the report revealed 16 accounts of which only 3 accounts did not have a negative account history. The collections section of the report revealed three unpaid collection accounts. An additional credit report was obtained in November 2006, and this report further revealed or confirmed Applicant's unfavorable financial history.

3. The SOR alleges and Applicant does not dispute that he is indebted to multiple creditors for more than \$25,000. This total includes about \$13,357 on a defaulted student loan. The accounts are discussed below.

4. SOR subparagraph 3.a concerns a judgment taken against Applicant for \$1,641 in January 2005. Applicant was sued by a former landlord for past rent and damages to a property he rented (Exhibit C at 2–5). In lieu of execution of the judgment, Applicant agreed to make payment of \$500 per month on the first day of February, March, April, and May 2005. At the hearing, Applicant represented that he made the four payments. He also presented documentary proof that he made two of the four payments (Exhibits B and C at 6–8). To show proof of payment, he attempted to contact the landlord and attorney who represented the landlord (Exhibit C at 9–14). Based on Applicant's credible testimony and the documentary evidence, I find this judgment is now paid.

5. SOR subparagraph 3.b concerns a \$180 collection account stemming from a telephone account. Applicant resolved this account by paying \$202 to the collection agency in February 2007 (Exhibits A and C at 15).

6. The next four delinquent debts (SOR subparagraphs 3.c, 3.d, 3.e, and 3.g) concern three collection accounts and one charged-off account for \$662, \$6,507, \$1,145, and \$2,215. To resolve these four debts, Applicant obtained assistance from a credit-counseling organization (Exhibit C at 16–26). On March 14, 2007, he agreed to a debt-management plan (DMP) wherein he will make a single monthly payment with the first payment due April 5, 2007.

7. Concerning the defaulted student loan debt alleged in SOR subparagraph 3.f, Applicant has recently entered into a loan-rehabilitation program in January 2007 (Exhibit C at 27–29). The balance due has increased from the amount alleged in the SOR. As of January 30, 2007, the amount due on the loan was \$29,565. To rehabilitate the loan, Applicant agreed to make \$200 payments on the 30th of each month beginning January 30, 2007, until the minimum of nine consecutive payments are made. If he makes the required nine payments, his loan will be eligible for rehabilitation and his

account may be considered for purchase by an eligible lender. So far, he has made payments in January and February.

8. Concerning his overall financial situation, Applicant describes his current situation as living paycheck-to-paycheck (R. 54). He has no money in the bank, about \$2,000 to \$3,000 in a retirement account, and his checking account has a typical balance of \$200 to \$500. He has no regular savings program, and he does not participate in his employer's 401(k) retirement savings plan. After a car accident in 2004, he bought a sports car for about \$24,000 and is making \$459 monthly payments on the loan. In addition, he is making monthly loan payments of \$377 for a motorcycle. He was unemployed from February 2000 until August 2000, and he has since been continuously employed.

9. Applicant has two drunk-driving offenses on his record. The first took place in 1989 when he was charged with operating a vehicle under the influence. He was found guilty and sentenced to 90 days in jail (88 days suspended), and ordered to pay a fine and costs and undergo an alcohol evaluation. In addition, he was placed on probation for one year. His second took place in 2004 when he was involved in a car accident. In 2005, he was found guilty of driving under the influence and sentenced to 180 days in jail (suspended), fined \$500, ordered to pay \$1,301 in fees and costs, and directed to attend and complete a treatment program within six months. He was placed on probation, which he completed in April 2006.

10. He received treatment or counseling for his alcohol use from May 2005 to November 2005. The services were provided by a licensed clinical social worker who requested Applicant attend Alcoholics Anonymous during this period. There is no evidence that Applicant has received an evaluation or diagnosis of alcohol abuse or alcohol dependence.

11. Applicant continues to use alcohol. Since his last drunk-driving offense, he estimates drinking alcohol about two to four times a month on the weekends (R. 33). He estimates drinking two to five beers per setting and he may have a vodka drink on occasion. He denies being drunk since the 2004 incident, and he denies drinking-and-driving since the 2004 incident. His girlfriend drinks rarely, and he abstains when in her presence. His intention is to continue drinking alcohol at a very moderate level. He has a valid driver's license issued by his state of residence. It has an expiration date of February 2011, and he has no restrictions on his driving privileges (R. 51).

12. Sometime in 2003, Applicant used the drug Zoloft when he was feeling down (R. 38-39). He did not have a valid prescription to use it, nor did he use it per doctor's orders. At the time, he was taking a generic form of Prozac per a valid prescription. He obtained a single dose (one pill) of Zoloft from a friend, took it, and did not like how it made him feel. He has had no other improper use of legal drugs, and he has had no involvement with illegal drugs.

POLICIES

The Directive sets 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.³ 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.⁴ 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.

BURDEN OF PROOF

The only purpose of a security-clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁵ There is no presumption in favor of granting or continuing access to classified information.⁶ The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.⁷ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁸ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁹

No one has a right to a security clearance.¹⁰ 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."¹¹ 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.

CONCLUSIONS

1. The Alcohol Consumption Concern

³ Directive, Enclosure 2, ¶ E2.2.1 (setting forth nine factors to consider under the whole-person concept).

⁴ Executive Order 10865, § 7.

⁵ ISCR Case No. 96-0277 (App. Bd. Jul. 11, 1997).

⁶ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

⁷ Directive, Enclosure 3, ¶ E3.1.14.

⁸ Directive, Enclosure 3, ¶ E3.1.15.

⁹ Directive, Enclosure 3, ¶ E3.1.15.

¹⁰ *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.").

¹¹ *Egan*, 484 U.S. at 531.

Under Guideline G, 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.

Here, based on the record evidence as a whole, a security concern is raised by Applicant's two drunk-driving offenses and his history of alcohol use and treatment or counseling for the same. His two drunk-driving offenses qualify as alcohol-related incidents away from work within the meaning of the guideline.

I reviewed the MC under the guideline and conclude none apply. But that does not mean other matters may not mitigate the concern. Here, we have an individual with two drunk-driving offenses separated by several years with no other alcohol-related incidents away from work or at work. He has not received an evaluation or diagnosis of alcohol abuse or dependence. He completed the court-ordered treatment in 2005, and he completed his last probation in 2006. His girlfriend drinks rarely, and he abstains when in her company. It does not appear that Applicant is an alcoholic unable to control or moderate his alcohol consumption.

2. *The Drug Involvement Concern*

Under Guideline H, use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness. It may impair judgment and it may raise questions about a person's ability or willingness to comply with laws, rules, and regulations.

Here, based on the record evidence as a whole, a security concern is raised by Applicant's one-time misuse of a prescription drug in 2003. His misuse qualifies as drug abuse within the meaning of the guideline.

I reviewed the MC under the guideline and conclude this matter is fully mitigated. His misuse of a single dose of Zoloft was an isolated incident that took place more than three years ago. There is no other evidence of improper or illegal drug involvement. Given these circumstances, Applicant's one-time misuse of Zoloft is unlikely to recur and it no longer casts doubt on his current reliability, trustworthiness, or good judgment. Accordingly, Guideline H is decided for Applicant.

3. *The Financial Considerations Concern*

Under Guideline F, a concern typically exists due to significant unpaid debts. Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information.

Here, based on the record evidence as a whole, a security concern is raised by significant unpaid debts. Applicant has a well-established history of financial problems, including a defaulted student loan. His derogatory financial history is a security concern because it indicates an inability

or unwillingness to satisfy debts and a history of not meeting financial obligations within the meaning of the guideline.

I reviewed the MC under the guideline and conclude he receives some credit in mitigation. Each MC is briefly summarized and discussed below.

The first MC—the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur—does not apply. His financial problems are ongoing, and his financial problems involved multiple delinquent debts. Although his financial problems may have begun when he was unemployed for several months in 2000, sufficient time has since passed so that his unemployment is no longer a valid factor. It is too soon to say that his financial problems are unlikely to recur.

The second MC—the conditions that resulted in the behavior were largely beyond the person's control—does not apply. Although his financial problems may have begun in 2000 when he was unemployed, the evidence does not support a conclusion that Applicant acted reasonably under the circumstances. Applicant has only recently begun to process of cleaning up his financial house. He has not acted with due diligence, and he should have done more sooner.

The third MC—the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control—applies in part. Applicant is now enrolled in a DMP with a credit-counseling organization, but there are not clear indications that his financial problems are being resolved or are under control. The first payment on the DMP was April 2007, and it is too soon to make any valid assessment.

The fourth MC—the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts—applies somewhat. Applicant paid off the judgment and a collection account. In January 2007, he started a loan-rehabilitation program for his student loan. And he recently started a DMP to resolve the other four debts. Taken together, his actions are sufficient to qualify for initiating a good-faith effort within the meaning of the guideline.

The fifth MC—the individual has a reasonable basis to dispute the legitimacy of the past-due debt—is not applicable here.

The sixth MC—the affluence resulted from a legal source—is not applicable here.

4. *The Whole-Person Concept*

I have also considered this case in light of the whole-person concept. Viewing the record evidence as a whole, the combined effect of his two alcohol-related incidents and his history of financial problems paints a picture of irresponsible behavior and questionable judgment. These circumstances militate against granting Applicant eligibility for access to classified information.

Despite his drunk-driving convictions as well as court-ordered treatment or counseling for his alcohol use, he continues to drink alcohol. Although his frequency of consumption is relatively low (two to four times per month), his rate of consumption is not relatively low (two to five beers

per setting). Continuing to consume alcohol at these levels is of some concern given his history of alcohol-related incidents because it creates the potential for recurrence of similar conduct.

In addition to his alcohol-related incidents, his financial problems do not speak well for his trustworthiness and judgment. Including the balance of his defaulted student loan as of January 2007, he now has about \$40,000 in bad debt. Despite his long-standing indebtedness, he took on loan payments of more than \$800 per month for a sports car and motorcycle. This indicates he did not consider paying off his past creditors to be much of a priority. He has only recently begun the process of resolving his indebtedness. He is two payments into the loan-rehabilitation program for his student loan and he has just started the DMP for his other debts. It is premature to conclude that Applicant will follow through and establish a proven track record of financial responsibility. This will only happen when Applicant chooses a sound financial lifestyle that is not based on borrowing and consuming beyond his means and ability to repay.

After weighing the favorable and unfavorable evidence, I conclude that Applicant has not presented sufficient information to explain, extenuate, or mitigate the combined effect of the alcohol consumption and financial considerations security concerns. Likewise, he has not met his ultimate burden of persuasion to obtain a favorable clearance decision.

FORMAL FINDINGS

_____ Here are my conclusions for each allegation in the SOR:

_____ SOR ¶ 1–Guideline G:	Against Applicant
Subparagraphs a, b, & d:	Against Applicant
Subparagraph c:	For Applicant
_____ SOR ¶ 2–Guideline H:	For Applicant
Subparagraph a:	For Applicant
_____ SOR ¶ 3–Guideline F:	Against Applicant
Subparagraphs a–g:	Against Applicant

DECISION

_____ In light of all the facts and circumstances, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Michael H. Leonard
Administrative Judge