

KEYWORD: Financial, Alcohol

DIGEST: Applicant failed to mitigate security concerns over his continuing to drink despite his 2005 treatment and a diagnosis of alcohol abuse and over his continuing to gamble despite substantial financial concerns. His alcohol abuse was documented in his medically recommended treatment in 2005 where he failed to complete aftercare. While he has taken some steps to reform his conduct, he failed to demonstrate sufficient positive changes in behavior supportive either of his willingness to stop gambling or to commit to sobriety. Consequently, security concerns remain over finances and alcohol. Clearance is denied.

CASENO: 06-18260.h1

DATE: 06/26/2007

DATE: June 26, 2007

In Re:)	
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)	
-----)	ISCR Case No. 06-18260
SSN: -----)	
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
KATHRYN MOEN BRAEMAN**

APPEARANCES

FOR GOVERNMENT

John Bayard Glendon, Esquire, Department Counsel

FOR APPLICANT

Chris Lucero, Jr., Esquire

SYNOPSIS

Applicant failed to mitigate security concerns over his continuing to drink despite his 2005 treatment and a diagnosis of alcohol abuse and over his continuing to gamble despite substantial financial concerns. His alcohol abuse was documented in his medically recommended treatment in 2005 where he failed to complete aftercare. While he has taken some steps to reform his conduct, he failed to demonstrate sufficient positive changes in behavior supportive either of his willingness to stop gambling or to commit to sobriety. Consequently, security concerns remain over finances and alcohol. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on September 19, 2006. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.¹ The SOR alleged specific concerns over Financial Considerations (Guideline F) in paragraph 1 and Alcohol Consumption (Guideline G) in paragraph 2 based on the revised (“new”) Adjudicative Guidelines² issued on December 29, 2005, and implemented by the Department of Defense, effective September 1, 2006. Applicant responded to these SOR allegations in a notarized Answer received on October 16, 2006, where he admitted paragraph 1 allegations 1.a., 1.b., 1.c., 1.d., 1.e. with explanation in and denied 1.f. With respect to paragraph 2 he denied allegations 2.a., 2.b., and admitted in part and denied in part allegation 2.c. He requested a hearing.

Department Counsel on November 1, 2006, indicated the case was ready to proceed. The matter was assigned to me on December 15, 2006. Subsequently, a mutually convenient date for hearing was agreed to; and a Notice of Hearing, issued on February 16, 2007, set the matter for March 16, 2007, at a location near where Applicant works and lives. Applicant received the notice on February 26, 2007, within the 15-day notice requirement. On March 2, 2007, his counsel entered his appearance and made a Motion for Continuance for two months time in order to prepare for the hearing. On March 5, 2007, I denied the Request for Continuance as he failed to establish a “good cause” basis as required by the Directive. Subsequently, on March 14, 2007, Applicant’s counsel again requested a continuance as his mother had died. While initially denying the request, I subsequently reconsidered and granted his request for a continuance on March 15, 2007. A Notice of Hearing, issued on March 15, 2007, cancelled the matter. A March 30, 2007 Notice of Hearing re-set the case hearing for May 17, 2007.

At the hearing the Government offered seven exhibits (Exhibit 1-7) which were admitted into evidence and called one witness, Mr. R, who was the Office of Personnel Management (OPM)

¹ This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.

² Applicant did receive a copy of the DoD Directive 5220.6 which was sent with his Statement of Reasons (SOR) on September 29, 2006. (TR 8; 14)

contract investigator who had interviewed Applicant. Applicant testified, called three witnesses, and submitted Exhibits A through C. Government's counsel indicated no objection, so the documents were admitted into evidence. The transcript (TR) was received on June 4, 2007.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 38 years old, has worked for a defense contractor from November 2005 to present. He completed an Electronic Questionnaire for Investigative Processing ("eQip") to obtain a security clearance³ in November 2005. Previously, he worked for another employer from April to November 2005. He received unemployment pay during this period. From October 2004 to April 2005 he was the front office manager at a hotel until they terminated him. He was unemployed from August to October 2004 as he had resigned from another hotel where he had worked from 2003 to 2004 when they cut his hours. He had a variety of previous jobs including working as a city employee from June to September 2002 when he had an injury covered by worker's compensation from September 2002 to July 2003. Previously, he was a federal mail handler from 1996 to 1999 until he was injured. He left that job to return to school for a master's degree. While he had requested a leave of absence for two years to return to school, his supervisor did not approve it. (Exhibit 1, Exhibit C; TR 78-79; 81; 86-87; 94-95; 96-103; 104-105; 135-138) Applicant served in the National Guard from 1987 to 1993 and was honorably discharged. (Exhibit 1; TR 77-78)

Applicant received a Master's in Public Administration from a state university in June 2001. He received a Bachelors degree in December 1997. (Exhibit 1; TR 49; 80-91; 136) Applicant married in October 1992. Applicant's wife works at the U.S. postal service and has been employed there for over twenty years. (Exhibit 1; TR 82-83) He has a child born in 2000. (Exhibit 1; TR 96)

Finances

Applicant disclosed that in October 2002 he filed for Chapter 7 bankruptcy in order to discharge \$70,000 in debt as he failed to live within his means. (Answer; Exhibits 1, 3, 4, 7; TR 83; 138-139) His unsecured debts were discharged in bankruptcy in January 2003. (Exhibit 2)

In an investigative interview conducted in March 2006, Applicant admitted that he and his spouse began to gamble in 1992. They each have a gambling addiction that contributed to the bankruptcy debt. He stated to the investigator that he planned to continue to gamble in moderation in the future. He and his wife withdrew cash from credit cards to gamble which increased the debt discharged. He had total liability of \$195,4000, but \$116,000 was his mortgage on his home which was secured debt; his student loan was not discharged. (Answer; Exhibits 3, 4; TR 29-37; 107-108; 109-110; 139-142)

³ The collective bargaining agreement will require him to have a secret clearance by September 2007. (TR 104-105)

Even though he has attended Gamblers Anonymous (GA) twice a month from November 1998 to 2006 which recommends stopping gambling, Applicant and his spouse have continued to gamble. Their current practice is to gamble, spending approximately \$400 per month. However, in 2006 he admitted they doubled that amount per month as he and his wife's gambling progressed over the years. He conceded in October 2006 that this gambling issue "must be corrected immediately." (Answer; TR 117-117; 124-125) Applicant conceded to the investigator that his wife gambles and "that he cannot stop her." He estimated the gambling expenses in 2006 totaled approximately \$5,000 per year. (Exhibit 4; TR 36; 49-50; 83-84; 110-111; 118-119)

Since the bankruptcy discharge, he estimated half of the \$30,000 of debt on his credit cards in March 2006 was due to gambling in the past three years, or a total of \$15,000. (Exhibits 3, 7; TR 114-117; 139) As of February 2007 he developed \$121,000 in new debt since his bankruptcy as he had eleven credit cards which were at their maximum level of debt. However, he then consolidated his debts to pay off the credit cards and has a line of credit loan of \$26,000 secured by his home where he will pay \$160 per month for ten years. (Exhibits 3,7; TR 143-146; 150-151; 156-157) Applicant conceded he made a decision to refinance so "there's money there, and gamble, we've got to gamble." (TR 146-155)

Applicant's current gross pay is between \$3300 and \$3,400 per month with take home pay of \$2,400 per month plus \$200 for a partial disability. His wife makes \$53,000 per year, so her take home pay is around \$3,000 per month. His monthly mortgage payment is \$803, and car payments are \$968. After paying his debts, they have \$3,000 for monthly living expenses and are able to live within their means. He has a budget, but the family does not follow a budget. They have not taken any financial courses. However he has taken an accounting course and consults with his father who is an accountant on financial matters. (TR 146-158)

Applicant and his wife continue to gamble. He gambled two weeks before the hearing. His wife gambled the weekend before the hearing. In the first five months of 2007 he had lost an estimated \$1,000 through gambling. Applicant attended GA as recently as two weeks before the hearing. He attends about every three weeks. He does not believe his continuing to gamble is a problem even though the goal of GA is to have an individual stop gambling. (TR 93-94; 111-114) His intent is to stop gambling but he conceded it is difficult as his wife continues to gamble. (TR 120-124; 159-160)

Alcohol

Applicant disclosed he began drinking as a teenager and continued to drink for twenty years at times to excess and to the point of intoxication to at least February 2006. However, he had no alcohol-related incidents. He attributed his current drinking in part to his city employment believes in 2002. (Answer; TR 52, 77, 127-128) His use of alcoholic beverages resulted in alcohol-related treatment or counseling (such as for alcohol abuse or alcoholism) as he participated in an alcohol program at a medical center on a voluntary basis from August to October 2005 for a condition diagnosed, in part, as Alcohol Abuse. (Answer; Exhibits 1, 4, 5, 6; TR 30-39; 128-129)

Applicant completed a "mini-Intensive Treatment Program) from August 2 to 24, 2005. That program met for three days per week for four weeks to provide education and support for the development of abstinence skills. He successfully completed "Phase 1 of treatment." However, after

he completed eight weeks of Phase 2 treatment of a recommended twelve weeks, he did not continue and complete Phase 2 treatment as work was his priority. He last attended October 27, 2005. (Exhibits A, B; TR 47-49; 87-88; 90; 132-134) He viewed Phase 2 as an aftercare program like Alcoholics Anonymous (AA) which he saw as optional as he had entered the program voluntarily. (TR 88-91; 129-130) However, he did not seek another support mechanism, such as AA, as he did not want other people to know that he had an alcohol problem. (TR 130-131; 135)

Since his treatment, he continues to drink, but he only drinks a “couple of beers” 95% of the time. He told the investigator he was last intoxicated eight months prior to the March 2006 interview. (Answer; Exhibit 4; TR 50-51; 51-55) Applicant believes he is “almost completely cured. . . . 95 percent of the time.” However, he is not abstinent. (TR 92; 127) He drinks alcohol in moderation. (TR 132)

Treatment records were summarized for the investigator by his doctor⁴ in April 2006 who reported that Applicant was a primary care patient assigned to her in March 2001; she continued to treat him and last saw him in July 2005. As he was actively using alcohol then, he was referred to a substance abuse clinic for treatment. In 2005 he reported that he was continuing to drink three to four beers a night and also reported his gambling addiction which troubled him emotionally. After October 2005 Applicant failed to come to subsequent appointments at the treatment center. She concluded that his “substance abuse” and other issues may impact on his ability to properly safeguard sensitive or classified information.” The condition might impact and impair his judgment and reliability. She would not recommend him for a position involving national security as he did not follow up on his prescribed treatment for substance abuse and other health issues. She had concerns about relapse. (Exhibit 5; TR 39-46; 84-86; 158-159)

The clinic records were also summarized and reflected that Applicant sought treatment in August 2005 and attended nine sessions until October 2005. He reported a ten year history of drinking as he had his first drink at age 12 and that drinking had adversely affected him. (Exhibit 6; TR 44-46)

Applicant’s expert witness, Mr. O, who has been an alcohol and drug abuse counselor for a homeless shelter program for thirteen years and is licensed by the state as a substance abuse counselor, was qualified as an expert alcohol and drug abuse counselor. He testified that he had evaluated⁵ Applicant in March 2007 and talked to him for “a little over an hour” and concluded that Applicant “had no alcohol or drug abuse problems. . . . currently.” He based his assessment solely on the amount of drinking that Applicant reported to him and did not review any of his treatment records. Applicant told this counselor that he only drank on weekends at social functions. Applicant

⁴ The investigator did not ascertain the medical credentials of Applicant’s doctor; however, she was not involved in his alcohol treatment, but referred him to the treatment program. (Exhibit 5; TR 55-58)

⁵ The expert explained he agreed to do an evaluation of Applicant as he is a friend of his lawyer. His frame of reference is the homeless men in his program; however he used the Hazelden model. The program psychologist at his program did not independently assess Applicant. He based his opinion solely on the information that Applicant disclosed to him when he concluded Applicant was a social drinker. (TR 21-23; 24)

did not report the extent that he was continuing to drink. Mr. O was aware of Applicant's previous treatment; however, he did not review those records. This expert defined problem drinkers as including only those who are daily drinkers which then affected a job or family. Applicant did not mention his current pattern of drinking in March 2007. He did admit his history of gambling addiction, but told the counselor he believed he had it "under control." (TR 13-18; 18-20; 23; 25) In weighing this expert's views, I give them limited weight as Applicant continues to drink socially as he does not believe alcohol is a problem and does not attend AA. (TR 94; 158)

References

Applicant's initial supervisor at the defense contractor (who hired him in November 2005 and supervised him until August 2006) testified on his behalf. He reported that Applicant's work was more than adequate and that he was always on time. He never observed Applicant show any signs of an alcohol abuse problem or a gambling problem. He assessed Applicant as a reliable and trustworthy employee. He was not aware of Applicant's history of gambling and previous alcohol treatment. (TR 60-67; 67-69)

Applicant's father, who is a certified public accountant (CPA) and previously worked for a federal agency and is now retired, testified on his behalf. He never saw any signs that his son was an alcoholic or even a heavy drinker. He described his son as trustworthy. (TR 70-75)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility which are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns. In deciding whether to grant or continue an individual's access to classified information, the mere presence or absence of any adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed these relevant Revised Adjudication Guidelines:

Guideline F: Financial Considerations

18. *The Concern.* Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, clack 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 acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Guideline G: Alcohol Consumption

21. *The Concern.* Excessive alcohol consumption often leads to the exercise of questionable judgment or failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

The responsibility for producing evidence initially falls on the Government to demonstrate

that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

Section 7 of Executive Order 10865 specifically provides industrial security clearance 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.” The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.⁶ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a security clearance.

CONCLUSIONS

Financial Considerations

The government provided substantial evidence that Applicant for bankruptcy in 2002 with debts discharged in 2003, but continue to accumulate substantial debts in part from Applicant and his wife’s addiction to gambling that has contributed to debts accumulated over several years. While he has attended GA he continues to use credit cards to gamble and accumulated substantial additional debts. While Applicant stated he hopes to stop gambling, he continues to gamble as does his wife which adversely affects the family finances. The recently consolidated eleven credit cards to a line of credit of \$26,000. He gambled two weeks before the hearing. His wife gambled the weekend before the hearing. In 2007 he had lost an estimated \$1,000 through gambling. Consequently, Financial Considerations Disqualifying Condition (DC), AG ¶ 19(a), (*inability or unwillingness to satisfy debts*), DC, AG ¶ 19(c), (*a history of not meeting financial obligations*), and AG ¶ 19(i), (*compulsive or addictive gambling as indicated by unsuccessful attempt to stop gambling. . . . borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling*) apply.

With the government’s case established, the burden shifted to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. While he and his wife have a good joint income, their credit problems from gambling escalated even since the 2002 bankruptcy and continue to raise concerns. Consequently, Applicant has not established a case in mitigation. For example, he provided no evidence under Mitigating Condition (MC) AG ¶ 20(c), (*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*). Neither was there substantial mitigating evidence under AG ¶ 20(b), (*the conditions that resulted in the behavior were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical*

⁶Executive Order No. 10865 § 7.

emergency, or a death, divorce or separation) and the individual acted responsibly under the circumstances). Since, he and his wife continue to gamble on a regular and consistent basis, AG ¶ 20 (a), (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment) does not apply.

While to date Applicant has been able to resolve through bankruptcy or by refinancing all these substantial debts, concern remains over the potential problems from gambling even though to his credit Applicant has demonstrated, in part, AG ¶ 20(d), *(the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts)*. While he has a professional position with a good income, the continuation of his gambling creates an ongoing security concern.

Whole Person Analysis

Having considered both the record and Applicant in light of the “whole person” concept, I conclude he is an earnest person who has struggled with reforming the life style issues of his and his wife’s ongoing gambling that has contributed to their financial problems. However, he and his spouse both continue to gamble despite the financial impact of those debts. While the 2002 bankruptcy was a legitimate method of dealing with the financial delinquencies, the ongoing debt created from their gambling continues to raise security concerns. The potential for pressure, coercion, exploitation, or duress is high even though he has a very positive employment history since 2005. In sum, the likelihood of new debts and related problems is high.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has failed to mitigate the security concerns pertaining to financial considerations. I rule against Applicant on subparagraphs 1.a. through 1.f. under SOR Paragraph 1.

Alcohol Consumption

The Government established security concerns over Applicant’s drinking, at times to excess, for over twenty years which continues. While complying with medical advice that he seek alcohol treatment in 2005, he was diagnosed with alcohol abuse and only completed Phase 1 of the treatment. Thus, Applicant’s conduct falls within disqualifying conditions (DC) 20 (c)⁷: *habitual or binge*

⁷ **22. Conditions that could raise a security concern and may be disqualifying include:** (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. (b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent. (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. (D) diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence; (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; (f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program; (g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent. Also, after being diagnosed with an alcohol abuse problem, Applicant continues to drink even after initial treatment in 2005. He did not completed all of the recommended after-care therapy and has not attended AA or a similar support group to maintain sobriety. Thus he falls within DC 20 (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. Significantly, Applicant has failed to abstain from alcohol.

Consequently, I conclude that Applicant failed to mitigate these alcohol-related security concerns as he provided insufficient evidence to demonstrate that he falls within mitigating conditions.⁸ Under MC 23 (b), even after being diagnosed with alcohol abuse, Applicant despite admitting issues with alcohol abuse, provided insufficient evidence of his actions to overcome this problem. While his supervisor expressed confidence in him, he failed to establish MC 23 (c), the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress. He failed to demonstrate significant positive changes in behavior nor to demonstrate sobriety as he does not have a record of abstinence from alcohol.

After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 2.a. through 2.c. under SOR Paragraph 2.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant

⁸ **23. Conditions that could mitigate security concerns include:** (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 individuals current’ reliability, trustworthiness, or good judgement; (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); (c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; (d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required after-care requirements, 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 alcohol treatment program.

Subparagraph 1.e.:
Subparagraph 1.f.:

Against Applicant
Against Applicant

Paragraph 2. Guideline G:

AGAINST APPLICANT

Subparagraph 2.a.:
Subparagraph 2.b.:
Subparagraph 2.c.:

Against Applicant
Against Applicant
Against Applicant

DECISION

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 a security clearance for the Applicant. Clearance is denied.

Kathryn Moen Braeman
Administrative Judge