

DATE: October 29, 2007

In re: _____ SSN: _____ Applicant for Security Clearance)))))))))	ISCR Case No. 06-19953
--	---	------------------------

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

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

David P. Price, Esq.

SYNOPSIS

Applicant has a history of alcohol dependence. It includes alcohol-related incidents in 1999 and 2004, and a history of counseling and treatment. He was in a codependent relationship with his wife for many years of their marriage. He separated from his wife in 2005, and he relocated to another state where he has worked for his current employer. His divorce was final in 2006. He has been nearly alcohol free since mid-2006, and he has not consumed alcohol since December 2006. He completed a nine-week substance abuse outpatient program in June 2007, and he is continuing with an after-care program. He is now maintaining his sobriety and has a good understanding of his situation. Clearance is granted.

STATEMENT OF THE CASE

This is a security clearance 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 May 21, 2007. The SOR is equivalent to an administrative complaint and it details the factual basis for the action. The issues in this case fall under Guideline G for alcohol consumption.

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 revision or amendment. The Revised Guidelines apply here because the SOR is dated after the effective date.

On June 25, 2007, Applicant replied to the SOR and requested a hearing. With the agreement of counsel, the hearing took place as scheduled on October 2, 2007. The transcript was received on October 11, 2007.

FINDINGS OF FACT

Applicant admits all SOR allegations with explanations. In addition, based on the record evidence, the following facts are established.

Applicant is a 52-year-old analyst. He has worked for his current employer, a federal contractor, since January 2005. His job involves providing training and support to the Army.

Applicant married in 1983, separated in January 2005, and divorced in March 2006. He has two adult children, a 23-year-old son and a 20-year-old daughter. Concerning his use of alcohol, he believes he was in a codependent relationship with his wife for many years of their marriage.

His employment history includes about 26 years of military service. In 1974, he enlisted in the Air Force and served about three years before transferring to a state air national guard unit. He then served in a traditional part-time role for several years. In 1982, he began working as a full-time member of the guard, as a traffic management supervisor, until his retirement in 2000. He retired due to a state guard policy that required retirement upon reaching 20 years of active federal service. He retired as a master sergeant (pay grade E7). Applicant had a highly successful military career receiving nine personal awards as follows: five Air Force Achievement Medals, three Air Force Commendation Medals, and the Meritorious Service Medal upon his retirement (Exhibit C). He was

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).

an honor graduate on two occasions, and on many occasions he was recognized in writing for his efforts and accomplishments (Exhibit D).

Applicant describes his forced retirement as devastating, because he had reached a professional high point and was forced to look for a new job as a 45-year-old man. After his retirement, he held several jobs (some with federal contractors) and had four periods of unemployment, the longest of which was about seven months in 2001. His prospects in his current job are good and he intends to remain there for the foreseeable future.

Applicant has a history of alcohol dependence. It includes alcohol-related incidents in 1999 and 2004, and a history of counseling and treatment. The first alcohol-related incident was in August 1999, when Applicant was approaching his retirement. He was on temporary duty in another state and was drinking in his hotel room on a Sunday while watching football. After having several drinks, he left to get something to eat. He was involved in a traffic accident when he slightly clipped a car from behind. Given the traffic on the road and being in unfamiliar surroundings, he returned to his hotel and called the police to report the accident. The police arrived and he was arrested for driving under the influence (DUI), negligent driving, failure to stop after an accident involving damage, and failure to return and remain at the scene of the accident. His blood-alcohol level was tested and found to be above .1%. The case was adjudicated in 2000, when he pleaded guilty and was sentenced to 90 days in jail (suspended), 40 hours of community service, a \$200 fine, and a requirement to complete alcohol counseling.

The second alcohol-related incident was in about September or October 2004, when Applicant was unemployed and living in his marital home. Like the first incident, it was a Sunday and he was drinking and watching football. His wife entered the room and told him he had too much to drink and she was going to call the police. She did, the police arrived, and they took him to a hospital for detox. He spent the balance of the day playing checkers at the hospital. He was not arrested or charged with a criminal offense and no legal proceedings resulted from the incident. There is no conclusive evidence about the degree, if any, of Applicant's level of intoxication, although he agrees that he was drinking alcohol and had no plans to drive that day. This incident convinced him that his marriage was irrevocably broken and led to the separation a few months later.

His history of counseling and treatment started in 1999 after his DUI arrest. He returned from the temporary duty and, with the knowledge and support of his superiors at the guard, entered a 30-day outpatient program at a local Veterans Affairs (VA) hospital. He completed the program in October 1999, and then continued periodic counseling through about June 2002.

In about June 2002, Applicant left his marital home and moved to another state to take a job with a federal contractor. He worked there until about December 2003 when he was laid off. During this time, he continued to receive counseling at a local VA hospital (Exhibit 6). A staff psychiatrist at the VA hospital diagnosed Applicant suffering from alcohol dependency and a major depressive disorder.

After the second alcohol-related incident, Applicant received alcohol counseling from October to December 2004. It included participating in a support group. This activity ended when he relocated to another state in January 2005 to start his current employment.

Applicant has been nearly alcohol free since mid-2006, having consumed about two to three drinks during the last half of 2006 (R. 92). He has not consumed alcohol since December 2006, the same month when he had a substance abuse assessment from a recognized alcohol treatment program. That assessment concluded that Applicant has “a long history of alcohol dependency and few support systems in place to handle ongoing sobriety” (Exhibit 5 at 5). The assessment recommended treatment, which Applicant was agreeable to. He completed a nine-week substance abuse outpatient program in June 2007. He is continuing with an after-care program on a weekly basis. According to a licensed clinical social worker with the program, Applicant is “successfully maintaining his sobriety and progressing in his understanding in all areas of addiction and addictive behavior” (Exhibit A–letter, dated June 21, 2007).

In addition, Applicant reconnected to the religion he was raised in by his family. He attends church regularly. Recently, he began attending Alcoholics Anonymous (AA) and is at the beginning stages of that process.

Concerning the depression, Applicant is under the care of a medical doctor (psychiatrist) for treatment of major depressive disorder (Exhibit A–letter, dated June 27, 2007). Applicant is compliant with appointments and medications, and he appears committed to addressing his issues. In addition, Applicant understands that using alcohol is counterproductive to his treatment for depression, as it is for his medical condition of diabetes.

Applicant presented several character witnesses, in person and on paper, vouching for his good character and trustworthiness (*See* witness testimony and Exhibits F–L). In general terms, these people, many of whom are clearance holders, describe Applicant as a productive, competent, and reliable employee who possesses integrity and exercises leadership.

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 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.

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.

⁵ Directive, ¶ 3.2.

⁶ Directive, ¶ 3.2.

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

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.

The concern under Guideline G for alcohol consumption¹⁴ is that “excessive consumption often leads to the exercise of questionable judgment or the failure to control impulses.”¹⁵ In addition, 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 alcohol-related incidents and his history of alcohol dependence and treatment for the same. I reviewed the DCs under the guideline and conclude that four apply. Each DC is briefly summarized and discussed below.

The first DC—alcohol-related incidents away from work—applies. His traffic accident and DUI arrest in 1999 plainly qualifies as an alcohol-related incident. The incident in 2004 when his wife called the police is a tad odd given that no criminal charges were made or brought, but it too was alcohol related and falls within the meaning of this DC. Combined, these two incidents raise a security concern.

The second DC—alcohol-related incidents at work—does not apply. There is no evidence that Applicant has reported to work or duty under the influence of alcohol. Indeed, the evidence suggests Applicant is a highly capable employee.

The third DC—habitual or binge consumption of alcohol—applies. Although there is not conclusive evidence of binge drinking, there is sufficient evidence to support a conclusion of habitual consumption of alcohol to the point of impaired judgment. His history of alcohol use and dependency supports this conclusion.

The fourth DC—diagnosis by a duly qualified medical professional of alcohol abuse or alcohol dependence—applies. Applicant does not dispute this, as he received a diagnosis of alcohol dependence from a staff psychiatrist at a VA hospital.

Likewise, the fifth DC—evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program—applies. Again, Applicant does not dispute this, and it was confirmed as recently as December 2006 when he was assessed as alcohol dependent.

The sixth DC—relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol-rehabilitation program—applies. Although he had periods of sobriety, he consumed alcohol after his initial treatment program at the VA hospital. His drinking continued, on a periodic basis, until he ceased all alcohol consumption in December 2006. Returning to drinking in light of his dependence diagnosis is plainly a relapse.

The seventh DC—failure to follow a court order—does not apply. There is no evidence showing Applicant violated a court order regarding alcohol education, evaluation, treatment, or abstinence.

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

¹⁵ Revised Guidelines at 15.

The applicable DCs raise a concern about Applicant's suitability for access to classified information. Taken together, they show questionable judgment and raise questions about his reliability and trustworthiness.

Turning to the evidence in mitigation, I reviewed the MCs under the guideline and conclude that two apply. Each MC is briefly summarized and discussed below.

The first MC—so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur—applies. The record evidence shows that Applicant's alcohol consumption and dependence were intertwined with his marriage. He separated from his wife in January 2005 and they divorced in March 2006. Since then, he has had little to drink and has been virtually alcohol free since mid-2006. These circumstances suggest that his alcohol dependence was connected to his codependent relationship with his wife. Indeed, the second alcohol-related incident was tied directly to his wife. It is unlikely that additional alcohol-related incidents will recur as the marriage is over and Applicant is abstinent. Given Applicant's history, this change of circumstances deserves due consideration.

The second MC—the individual acknowledges his alcoholism, provides evidence of actions taken, and has established a pattern of abstinence—applies. Applicant receives full credit under this MC. He knows he has a problem, is taking affirmative steps to address it, and he has been abstinent since December 2006, a period of about 10 months. Although a longer period of abstinence may be preferable, Applicant's 10-month period, coupled with a favorable evaluation from the licensed clinical social worker, is sufficient to establish a pattern of abstinence.

The third MC—the individual is a current employee who is participating in a counseling or treatment program and has no history of previous treatment or relapse—does not apply. His history includes treatment at the VA followed by relapse. Accordingly, no credit is due under this MC.

The fourth MC—the three-part reform and rehabilitation condition—does not apply because Applicant has not satisfied the first prong of the MC. Although he completed a nine-week substance abuse program in 2007, he is still in the after-care program. The MC cannot be applied because he has not yet completed the after-care program.

The record evidence has also been considered in light of the whole-person concept, and it supports a conclusion that the disqualifying evidence is outweighed by the mitigating evidence. This conclusion is based on Applicant's well-established actions taken to address his alcohol dependence. His track record of current sobriety is relatively brief compared with his history of alcohol dependence, and this circumstance is a legitimate concern. It is overcome, however, by the totality of facts and circumstances indicative of sobriety and his commitment to remain abstinent. For example, those facts and circumstances include the following: (1) his impressive record of honorable military service for 26 years coupled with his favorable character evidence; (2) his separation and divorce from his wife; (3) he has been virtually alcohol free since mid-2006 and has abstained for the last ten months; and (4) he received a favorable evaluation from a licensed clinical social worker from the treatment program. Taken together, these facts and circumstances support a conclusion that Applicant is unlikely to relapse.

To sum up, the evidence demonstrates that Applicant has insight into his alcohol dependence and the problems it has caused him. He is taking mature, serious steps to address it. Not only is he committed to abstinence in light of his alcohol dependence, but he understands alcohol use is counterproductive to his mental and physical health (depression and diabetes). After weighing the favorable and unfavorable evidence, Applicant has met his burden to explain, extenuate, or mitigate the security concern. Likewise, he has met his ultimate burden of persuasion to obtain a favorable clearance decision. Accordingly, Guideline G is decided for Applicant.

FORMAL FINDINGS

_____ SOR ¶ 1–Guideline G:	For Applicant
Subparagraphs a–j:	For Applicant

DECISION _____

_____ In light of all the circumstances, it is clearly consistent with the national interest to grant or continue eligibility for security clearance for Applicant. Clearance is granted.

Michael H. Leonard
Administrative Judge