



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
)  
) ISCR Case No. 06-25957  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: John Bayard Glendon, Esquire, Department Counsel  
For Applicant: *Pro Se*

September 10, 2008

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant has a history of failing to meet his financial obligations, in part, because of his gambling problem. His evidence is insufficient to show that he has a track record of financial responsibility, or that his gambling problem is under control. He failed to mitigate security concerns regarding Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Clearance is denied.

**Statement of the Case**

On February 28, 2006, Applicant submitted a Security Clearance Application or Standard Form (SF) 86.<sup>1</sup> On April 4, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2,

<sup>1</sup> GE 1.

1992, as amended, modified and revised.<sup>2</sup> The SOR alleges security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). It detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant answered the SOR on May 2, 2008, and requested a hearing before an Administrative Judge. The case was assigned to me on June 4, 2008. DOHA issued a notice of hearing on June 24, 2008. The hearing was convened as scheduled on July 15, 2008. The government offered Government Exhibits (GE) 1 through 7, which were admitted without objection (Tr. 20). Applicant testified on his own behalf, and presented 10 documents identified as Applicants Exhibits (AE) 1-10 (Tr. 31). DOHA received the transcript of the hearing (Tr.) on July 21, 2008.

### **Findings of Fact**

Applicant admitted the facts underlining all of the SOR allegations, and provided some explanations. He denied, however, that his behavior would make him a risk to national security. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 44-year-old electrical engineer working for a Government contractor. He served honorably in the U.S. Navy from 1983 to 1989, and achieved the rank of E-4 (Tr. 39). He attended college from 1990 to 1996, and received his Bachelor's Degree in electrical engineering in May 1996 (Tr. 5, 40). From 2001 to 2005 he studied music at another U.S. university (Tr. 63). He married his wife in March 1988 and they were divorced in May 1996 (Tr. 36). He has a 19-year-old son of this marriage who is attending college. Applicant provides \$450 a month to his son. Additionally, he provides approximately \$200 to both his son and ex-wife to assist with his son's college expenses (Tr. 36-37).

He has worked for his current employer, a Government contractor, since May 1996. He received access to classified information at the secret level when he was hired and has worked on numerous classified projects (Tr. 6, 43). There is no evidence he has compromised classified information. He has no police record, and there is no evidence he has used or trafficked in illegal drugs.

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<sup>2</sup> On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guidelines to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006. The revised Adjudicative Guidelines are applicable to Applicant's case.

## Financial Considerations

Applicant's background investigation addressed his financial situation and included the review of his security clearance application, his answers to DOHA interrogatories (GEs 3, 4 and 5), and three credit bureau reports (CBRs) from 2006 (GE 7), and two from 2007 (GEs 5 and 6). The SOR alleged two delinquent/charged off accounts totaling approximately \$50,179. It also alleged that Applicant has a gambling problem and that he improperly used his corporate credit card to obtain money for gambling. The allegations are supported by the record evidence.

Applicant explained he had financial problems when he was in the Navy, but was able to take care of his debts (Tr. 41). While in the Navy, he consolidated 14 debts, totaling \$7,000, and paid them off (Tr. 79). From 1990 to 1996, he also had financial problems because both he and his wife were attending college, worked part-time, and they had a child. He had a car repossessed in 1993-1994 (Tr. 80).

While in college, Applicant applied for four student loans which have been in default since 1996 (SOR ¶ 1a). He believes his total student loan debt is \$56,325 because the creditors recently added \$9,000 in penalties to his debt (Tr. 46-47). He claimed that in 2000 he entered into a payment rehabilitation program and paid \$800 a month for 19 months towards his student loans. He was considered to be in good standing. However, he "let it slide again" in 2002, and the loans have been delinquent since (Tr. 44). He stopped paying his student loans because of "his financial negligence" – he was spending his earnings elsewhere (Tr. 44). Since 1996, he has had no unemployment or underemployment periods, and did not have any other financial problems to prevent him from paying his loans (Tr. 44, 50). The Friday before his hearing, Applicant contacted the student loans creditor and established a Direct Debit electronic payment agreement. He promised to pay \$395 every two weeks to settle his student loans debt. The first payment was supposed to start eleven days after his hearing.

SOR ¶ 1.b concerns one of Applicant's delinquent credit cards. He used his credit cards to obtain gambling money. In March 2008, he borrowed \$19,000 from his 401(k) account to pay this debt. He settled SOR ¶ 1.b (\$7,947) for \$5,400 (AE 9). He used \$4,150 to pay another debt not alleged in the SOR (AE 8), and to pay his sister \$6,500 he borrowed from her to pay his previous 401(k) loan (Tr. 57-58, 61). He had to pay off his first 401(k) loan first to be able to borrow the \$19,000.

Applicant testified that in November 2006, he became concerned about his debt and started to make payments trying to get a handle on his debt (Tr. 59). He sought financial assistance from a debt relief company and consolidated two of his credit card debts. He claimed he paid \$500 a month for 13 months through the debt relief company. Applicant terminated his agreement in November 2007 when he realized the agreement involved expensive overhead charges (Tr. 77, AE 6).

Applicant started gambling in 2002. He has a gambling problem, and his delinquent debts are the result of his gambling problem (Tr. 16, 35). He started losing money and stopped paying his other debts (Tr. 50-51). Applicant estimated that from 2002 to 2006, he lost approximately \$20,000 a year gambling. He considers himself a compulsive gambler (Tr. 51). He used to gamble five times a month. He has not stopped gambling completely, but has cut it back (Tr. 51). He claimed the month before his hearing he gambled only once, and that he only lost \$150.

In 2006, Applicant used his employer's business credit card to obtain approximately \$1,200 for gambling (Tr. 35, 54). He reported to his employer his financial and gambling problems, and his misuse of his employer's credit card (Tr. 55). Applicant was counseled by his supervisor and informed it was illegal for him to use his company's business credit card for anything other than business expenses (Tr. 66). He understood his actions were wrong, and promised not to do it again. Applicant improperly used his company's business credit card twice again, in 2006 and 2007. He reported his misuse of the credit card one time, and his supervisor confronted him the second time (Tr. 85).

Applicant was referred to the company's counselors and he spoke to them about his problems; however, he never set up any counseling sessions (Tr. 56). At his hearing, Applicant promised to meet with his company's counselors after the hearing to discuss his treatment options for his gambling and financial problems (Tr. 57). He was aware of the Government's security concerns since April 2008. He did not seek counseling because he believed he could handle his problems on his own. Applicant did not try to stop gambling before because he was afraid of ending that part of his life (Tr. 83).

In 2002, Applicant's earned approximately \$70,000 a year. As of his hearing date he was making approximately \$85,000 a year (Tr. 52). He pays \$600 rent (which includes all utilities). His child support obligation is \$460 a month. He provides an additional \$200 to both his ex-wife and son to assist him with his son's college expenses. He promised to pay \$800 a month to pay his student loan obligation. He also promised to pay \$800 a month to pay his 401(k) loan (Tr. 62-64).

Applicant stated he is determined to resolve all of his debts and to stop or reduce his gambling habit. He believes he has made good progress with his debts. He promised to change his attitude towards gambling, and to seek counseling for his gambling and financial problems. Applicant does not consider himself to be a security risk, and does not believe his behavior makes him a security risk. He promised never to do anything illegal or to do anything to place the United States at risk.

Applicant is considered a valued employee who is reliable and trustworthy. He exhibits good character traits and is respected by his fellow employees. He has never had a security violation and his manager recommends him for a security clearance.

## 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 controlling 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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence,"<sup>3</sup> demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).<sup>4</sup>

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<sup>3</sup> See Directive ¶ E3.1.14. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>4</sup> "The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

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 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* Executive Order 12968 (Aug. 2, 1995), Section 3.

### **Analysis**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the relevant security concern are under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). AG ¶ 18 articulates the security concern relating to financial problems:

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 acts to generate funds.

AG ¶ 19 provides five Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt.
- (c) a history of not meeting financial obligations;
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern; and

(i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant's history of delinquent debt is well documented in his security clearance application, his answers to the DOHA interrogatories, his credit reports, and his testimony. He has had recurrent financial problems in the late 1980s, early 1990s, and more recently since 2002. His current financial problems are linked to his compulsive gambling and his lack of financial responsibility. As of the hearing date, he had one outstanding debt totaling approximately \$56,325 which has been delinquent since around 1996 (SOR ¶ 1.a). Although he paid SOR ¶ 1.b, this debt is still a concern because he merely changed creditors to bring the debt current. He owes \$19,000 to his 401(k). The government established the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(f).

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

(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;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Considering the record evidence as a whole,<sup>5</sup> I conclude that none of the mitigating conditions fully apply. AG ¶¶ 20(a) or 20(b) do not apply because he did not act more aggressively and responsibly to resolve his delinquent debts. He has been successfully employed from 1996 to 2008 and earned enough money to resolve his debt. Applicant presented insufficient evidence of good-faith efforts to resolve, to settle, or to pay his delinquent debts. He failed to complete some of his past settlement agreements. He receives credit for his last minute attempts to settle his debts and to pay creditors before his hearing. However, Applicant's last minute addressing of his delinquent obligations does not establish good-faith<sup>6</sup> efforts in the resolution of his debts. These factors cast doubt on Applicant's current reliability, trustworthiness, or good judgment.

Applicant's testimony established no factors that may be considered as circumstances beyond his control contributing to his inability to pay his debts, i.e., such as a period of unemployment and underemployment. AG ¶ 20(c) does not fully apply. Although there is evidence that he has participated in some financial counseling (while in the Navy and by contracting with a debt consolidation/payment service), there are insufficient indications that Applicant's financial problems are being resolved or are under control. Applicant's financial history and lack of favorable evidence preclude a finding that he has established an adequate track record of financial responsibility.<sup>7</sup>

Under Guideline E (Personal Conduct), conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect

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<sup>5</sup> See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for AG ¶ 20(a), all debts are considered as a whole.

<sup>6</sup> The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

<sup>7</sup> "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)).



classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. AG ¶ 15.

AG ¶ 16 provides one Personal Conduct Disqualifying Condition that could raise a security concern and may be disqualifying in this case:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of . . . (3) a pattern of dishonesty or rule violations; and (4) evidence of significant misuse of Government or other employer's time or resources . . .

Applicant's repeated misuse of his company's credit card to gamble and for his personal use constitutes a pattern of dishonesty or rule violations, and it is a misuse of his employer's resources. The government established the disqualifying conditions in AG ¶ 16d(3) and (4).

Of the seven Personal Conduct Mitigating Conditions under AG ¶¶ 17(a)-(g), I considered two as potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Considering the record as a whole, I find none of the mitigating conditions apply. I find Applicant's illegal use of the company's credit card temporally recent and frequent. He used the credit card after being counseled by his supervisor, and knowing his personal use of the credit card was improper. His behavior creates doubt on Applicant's reliability, trustworthiness, and judgment. Moreover, Applicant has not received sufficient counseling or taken positive steps to resolve his gambling and financial problems. I find his questionable behavior is likely to recur.

## **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.

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. AG ¶ 2(c).

Applicant's years of working for Government contractors weighs in his favor. Aside from his delinquent debts (which are a civil, non-criminal issue), he is a law-abiding citizen and a good father. He expressed regrets for his financial mistakes and gambling problems. He is trying to correct them and promised his strong determination to change his attitude towards gambling.

Considering the totality of the circumstances in his case, including Applicant's age, education, maturity, his years working for the Government contractors, he demonstrated a lack of judgment and trustworthiness in the handling of his financial affairs and the use of his company's credit card. He failed to deal responsibly with his financial obligations, especially his student loans, from 1996 until receipt of his SOR. His failure to meet his financial obligations, his gambling problem, and his misuse of his company's credit card indicates poor self-control or an unwillingness to abide by rules and regulations. His behavior raises questions about his reliability and ability to protect classified information.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant has failed to mitigate the security concerns pertaining to financial considerations and personal conduct.

## **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 F:	AGAINST APPLICANT
Subparagraphs 1.a – 1d:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a – 1b:	Against Applicant

### **Conclusion**

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 eligibility for a security clearance for Applicant. Eligibility for a security clearance is denied.

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Juan J. Rivera  
Administrative Judge