



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



In the matter of: )  
)  
) ISCR Case No. 20-02578  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

05/05/2022

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant failed to present sufficient evidence to mitigate the financial considerations and personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 21, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. Applicant responded to the SOR on August 3, 2021, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on March 18, 2022. The hearing was convened on April 5, 2022. Government Exhibits (GE) 1 through 13 were admitted into the record without objection. GE 13, the Government’s Discovery Letter, was marked and made part of the record, but it is not substantive evidence.

Applicant Exhibits (AE) A through C were admitted into the record without objection. AE C was received post-hearing via email. Applicant testified as reflected in a transcript received by DOHA on April 12, 2022.

## **Procedural Issue**

Applicant requested an expedited hearing. At his hearing, Applicant testified that he had sufficient time to prepare, was ready to proceed, and affirmatively waived his right to 15-day advance notice of the hearing. (Tr. 15)

## **Findings of Fact**

Applicant is 59 years old. He graduated from high school in 1981. He enlisted in the U.S. Army in 1982, and served on active duty until he was honorably discharged in 1990. He received the equivalent of two years of college while in the military service, but did not receive a degree. He married in 1985 and divorced in 1997. He married his current wife in 2000. He has four children, ages 29, 20, 14, and 10.

Applicant's work history shows he worked for a federal contractor between 2004 and July 2017. During this period, he was granted eligibility for a clearance. He was hired by a federal contractor in July 2017, and was terminated from his position when his eligibility for access to sensitive compartmented information (SCI) was suspended. In August 2017, Applicant used his then employer's (Agency) computer system to search for Gamblers Anonymous (GA) locations near him. He also sent several emails referencing gambling transactions, a cash withdrawal from a monetary investment vehicle, and communicated relationship problems speaking of separation, filing bankruptcy, and credit card debt. (GE 12)

After his termination, Applicant was unemployed between November 2017 and February 2018, when he was hired by another federal contractor. Since then, he has worked for three different federal contractors. He was hired by his current employer and clearance sponsor in November 2021. (2018 SCA; Tr. 19-23)

Applicant submitted his most recent security clearance application (SCA) on February 15, 2018, seeking the continuation-reinstatement of his clearance eligibility required for his job. In his answers to Section 25 (Investigations and Clearance Record) of his 2018 SCA, Applicant disclosed that the Agency suspended his SCI eligibility, because of the financial considerations concerns that were subsequently alleged in the SOR.

In his answers to Section 26 (Financial Record), Applicant answered "NO" to the following questions: (1) In the last seven years, have you filed a petition under any chapter of the bankruptcy code? (2) Gambling - "Have you ever experienced financial problems due to gambling?" and (3) Taxes - "In the last seven years have you failed to file or pay federal, state, or other taxes when required by law or ordinance?". Applicant failed to disclose in his 2018 SCA that he was having financial problems due to his gambling problem. I note that he submitted his 2018 SCA in February 2018, and he filed his Chapter 13 bankruptcy in March 2018.

Applicant failed to disclose that he was experiencing financial and personal problems due to his gambling, that he had delinquent credit-card debt, and that he did not

pay federal taxes when due. He stated; however, that he had a federal tax debt and that he had a payment agreement in place with the IRS. In the SCA comments section he stated:

My finance[s] took a beating in 2016 when I receive my inheritance. We spent money recklessly . . . we purchased a foreclosure home . . . I dumped everything I had and then some to build this house up . . . we also took several weekend trips and I took a cruise and my family took a few additional vacations . . . I have never been late on any payments and I am still current . . . when the agency pulled my SCI and I became unemployed it added a tremendous amount of additional debt . . . I had to take a job making much less

The SOR alleged that Applicant filed three bankruptcies: a Chapter 7, filed and discharged in 1996 (SOR ¶ 1.a); a Chapter 13, filed in 2009 and discharged in 2015 (SOR ¶ 1.b); and a Chapter 13, filed in March 2018, and dismissed in November 2018 for failure to make plan payments. (SOR ¶ 1.c) The SOR further alleged that he owed the IRS \$34,548 for delinquent taxes for tax year (TY) 2016, and \$89,220 for TY 2017 (SOR ¶¶ 1.d, 1.e); that he had five charged-off accounts totaling \$37,326 (SOR ¶¶ 1.f - 1.j); and that he engaged in significant financial transactions to fund his gambling or to pay gambling debts, and that his gambling contributed, at least in part, to his delinquent debt (SOR ¶ 1.k).

Under Guideline E, the SOR alleged that Applicant falsified his 2018 SCA when he answered “NO” to the question “Have you ever experienced financial problems due to gambling?” (SOR ¶ 2.a) And, that he was terminated from his employment in 2017 after his access to SCI was suspended due to financial considerations and personal conduct security concerns. (SOR ¶ 2.b)

In his answer to the SOR, Applicant admitted the allegations of SOR ¶¶ 1.a through 1.f, 1.h, 1.k, and 2.b. He denied SOR ¶¶ 1.g, 1.i, 1.j, and 2.a. He explained that he and his ex-wife filed Chapter 7 bankruptcy in 1996 during the divorce proceedings because it was the only way to split the marital debt to the point where they both could afford to live and pay child support. (Tr. 23) In 2009, he filed Chapter 13 because he could not afford two mortgages. After selling his residence, he bought a new home before the closing of the sale on his old residence. Before the closing on the old residence, the buyer died, and he ended up with two mortgages that he could not afford. After his savings were depleted, he had a short sale on one of the properties and filed bankruptcy. (Tr. 23-24)

Concerning the 2018 bankruptcy filing, Applicant explained that he was financially irresponsible. His father died in 2014 and his mother in 2016. He inherited a share of his mother’s IRA, totaling about \$467,000, and recklessly spent his inheritance. When asked how much of his inheritance was spent gambling, Applicant quibbled and was unable to provide a straight answer. His best guess was “over \$50,000.” (Tr. 25-27) When asked, what was the reason he filed a Chapter 13 in 2018? He stated: “Originally, it was because all the debt that I incurred after [sic] through the gambling, through just reckless spending, vacations, everything else, I figured let's start clean.” (Tr. 43)

Applicant claimed that when he realized he had a gambling problem, he dismissed the 2018 bankruptcy to face his creditors because that was the advice GA provides in its website. Bankruptcy court documents indicate the 2018 bankruptcy was dismissed for failure to make plan payments. (GE 4) Applicant explained he used some of his inheritance to buy a foreclosure home of about 6,500 square feet for about \$465,000. He claimed he spent between \$50,000 and \$75,000 refurbishing the home and purchased a camper to live in for about four months while the house was being refurbished. (Tr. 29)

Regarding his IRS debt, Applicant explained that he failed to pay sufficient taxes when he withdrew the funds in his inherited IRA. In 2016, he also withdrew the funds in his \$90,000 IRA. When asked why did he withdraw the funds in his IRA, he stated he could not recall. He guessed it probably had to do with paying taxes, expenditures or gambling, or a combination of all of these reasons. (Tr. 34-35) The aggregate of his inheritance, job income, and withdrawing \$90,000 from his IRA raised his tax bracket and increased his tax debt. He believes he reported income of \$470,000 in 2016. By the end of 2017, Applicant had spent all of his inheritance, the proceeds of the sale of a property, and \$90,000 from his IRA. (Tr. 35-36)

Applicant did not pay the proper tax rate for TYs 2016 and 2017. He contacted the IRS, paid \$10,000, and started a payment plan for TY 2016. Since then, he has stopped his IRS payment plan twice and hired two different companies to help him seek an offer in compromise or a settlement for less than owed with the IRS. He claimed he has spent over \$12,000 in companies' fees without results.

Applicant's documents do not show any payments to the IRS between March 2018 and May 2019 and between January 2020 and November 2021. He believes these were the periods during which he hired two companies to negotiate on his behalf with the IRS. (Tr. 39-40) As of his hearing date, Applicant had established a payment plan with the IRS in which he promised to pay \$1,505 monthly. In April 2022, he increased the payment to \$1,550. He owes the IRS over \$32,000 for TY 2016, and over \$91,000 for TY 2017. (Tr. 41) He claimed he paid off his tax debt to his state. (Tr. 42)

Applicant testified he did not realize he had a gambling problem until after he was terminated in 2017 and the 2018 clearance investigation started. After the 2018 bankruptcy dismissal, Applicant claimed he contacted the creditors of the charged-off debts alleged in SOR ¶¶ 1.f and 1.h, established payment plans with both creditors, and made payments for a period. He stopped making payments for about six months and recently started a new payment plan. He averred that he has been making payments for the last year or so.

The status of the remaining SOR allegations follows:

SOR ¶ 1.f (\$15,887) concerns a car Applicant purchased in 2017. The account became delinquent in May 2018, and it was charged off. He contacted the creditor and established a \$200 monthly car payment in 2018. He has been making payments as agreed since, and reduced the balance owed to \$14,487. (AE A and B)

SOR ¶ 1.g (\$3,036) alleges a personal loan Applicant took out in 2017. He claimed the loan was never delinquent, but he included it on the bankruptcy filing. The credit report of March 2021 (GE 8) shows he stopped making payments on the account in May 2018, and the account was charged off. After the bankruptcy was dismissed, he negotiated a lower pay off balance, and he paid off the account on March 31, 2022 (after he received the July 2021 SOR). (AE A and B)

SOR ¶ 1.h (\$9,441) alleges a delinquent credit card opened in 2017 that was charged off in 2021. Applicant claimed he was paying \$235 monthly and reduced the debt to \$8,200. He settled the debt for less than the full amount and paid it off on March 3, 2022. (AE A and B)

SOR ¶ 1.i (\$8,840) alleges a delinquent credit card that was charged off. Applicant claimed he contacted the creditor before he received the SOR and settled and paid it. The documentary evidence shows that he resolved the account on April 22, 2022 (after the SOR was issued). (AE C)

SOR ¶ 1.j (\$122) alleges a charged-off credit account. Applicant contacted the creditor before he received the SOR and settled and paid off the debt. He paid the account in February 2021, before the SOR was issued. (GE 8; Tr. 44-49)

In his answer to the SOR and at his hearing, Applicant denied SOR ¶¶ 1.g, 1.i, and 1.j because he paid them off before the SOR was issued in July 2021. Documentary evidence shows he paid SOR ¶ 1.g on March 2022, SOR ¶ 1.i in March 2022, and SOR ¶ 1.j in February 2021. (AE A, B)

Concerning SOR ¶ 1.k, Applicant admitted he engaged in significant transactions to fund his gambling. He averred he did not have a gambling debt because he used his inheritance to fund or pay off his gambling debt. He argued that his gambling did not contribute to his delinquent debts. He believes that losing his SCI eligibility, being terminated from his job, being unemployed for four months, and working for about \$35,000 less than what he used to earn contributed to his delinquent debt.

Regarding SOR ¶ 2.a, Applicant claimed he did not falsify his February 2018 SCA when he answered NO to the question whether he had ever experienced financial problems due to gambling. He testified that he has been a gambler his whole life. He likes going to casinos. Brick and mortar gambling was always something he did with his wife and friends. They would go out to casinos two or three trips a year to have fun. It was always a very nice environment, he traveled to nice places, and it was part of his social activities. (Tr. 29-30) He claimed he always paid his debts on time.

Applicant's claims of lack of falsification are not credible. In August 2017, he used his Agency's computer system to search for Gamblers Anonymous (GA) locations near him. He also sent several emails referencing gambling transactions, a cash withdrawal from a monetary investment vehicle, and communicated relationship problems speaking of separation, filing bankruptcy, and credit card debt. (GE 12)

Applicant cruised in the Caribbean with his family in 2014, 2015, 2016, and 2017. At his hearing, he stated that during the last three years, he and his family took a trip to another state, and he travelled to Puerto Rico. He noted that his wife is accustomed to living an extravagant lifestyle, and she took at least three more cruises than he did. (GE 2) The day of his hearing, he indicated his family was in a cruise, but that he could no longer travel with them in cruises because of his gambling problem. (Tr. 56)

Applicant believes that what got him into financial trouble in 2016 was his online gambling, not visiting casinos. He stated he became involved in online gambling moderately when his stepdad died in 2014. But when his mother died in 2016, he got into online gambling heavily. He gambled every day, and the internet made it easy for him to spend thousands of dollars right from his cell phone. Before he inherited his mother's IRA, Applicant stated he did not have the money to gamble because he was living from paycheck to paycheck. (Tr. 29-31)

Applicant's online gambling was done with overseas companies, and he did not receive any IRS forms W-2G for TY 2016 and 2017. Between May and August 2017, Applicant debited \$53,261 from one of his checking accounts to pay international gambling businesses located in China, Thailand, England, and Shanghai. (GE 2) When he disclosed to his wife his gambling problems in 2017, she filed for legal separation. Applicant claimed he has not participated in any online gambling since 2017. He admitted he continued gambling in casinos for a period during 2018, until he decided to attend GA. He also gambled in 2019 during a cruise with his family. He used the proceeds of the sale of one of his properties to gamble during a cruise. He averred his "clean date," the day he stopped gambling, was September 22, 2019. He had gambled the night before, but promised his spouse he would stop gambling. He testified he gambled again in July 2020, and reported the incident to his GA sponsor.

Applicant testified that after almost three years of attending GA meetings, he realized that a lot of the negative things that happened in his life had to do with his gambling. Now that has learned about himself through GA, he realizes that gambling has been an issue his whole life. (Tr. 31) He believes he accepted responsibility for every debt he had and paid them off. He also believes he made a tremendous effort to correct his IRS issues, get his clearance back, and support his family. (Tr. 18)

Concerning SOR ¶ 2.b, Applicant admitted that he was terminated from his employment with a federal contractor in 2017 after his access to SCI was suspended. He noted that he is considered to be a valuable employee and received a clearance about one year after he was terminated. He believes he has demonstrated that he has been trustworthy, open and honest with his peers, security personnel, and his company.

Applicant believes that his financial situation is good. He is current with his recent financial obligations. He believes that his credit reports show that during the past three years he established a good credit payment history. Applicant presented no evidence to show he has participated in financial counseling recently, other than when he filed for bankruptcy in 2018.

When asked whether he had a gambling problem, Applicant stated: I don't have a gambling problem now, but I will always be a gambler by addiction. It's something that is not going to go away. It is something I have to continue to work on and be aware of, and it is important to surround myself with a support system. But I can tell you without doubt that my financial problems probably for the past 20 years have stemmed one way or another from my gambling or inability to value money. (Tr. 57)

Applicant stated he intends to continue attending GA and to avoid gambling. He promised to remain abstinent in the future. Notwithstanding, he is not currently attending GA meetings on a frequent basis. Since June 2021, he attended one GA meeting during the second week of February 2022. He claimed he was attending GA meetings until he moved to his current residence. He stated that due to COVID-19, the three GAs by his current residence have closed. There's one still available, and he went to it in February 2022, but he does not like the format. He claimed he stays in touch with his sponsor, but with his stress, he acknowledged that he needs to go back to GA meetings. He claimed he has not gambled since 2020. He stated he reads his book and stays in contact with his sponsor. He presented no documentary evidence to corroborate his attendance of GA meetings, or his conversations with his sponsor.

### **Policies**

The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 2017.

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AGs list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AGs should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government

must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance. (See Section 7 of EO 10865; See also EO 12968, Section 3.1(b) (listing prerequisites for access to classified or sensitive information))

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern for financial considerations is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations;
- (f) failure to file . . . or failure to pay annual federal, state, or local income tax as required; and
- (i) concealing gambling losses, family conflict, or other problems caused by gambling.



Applicant received a Chapter 7 bankruptcy discharge in 1996, a Chapter 13 discharge in 2015, and filed for a Chapter 13 in 2018, which was dismissed for lack of plan payments. He is indebted to the IRS for over \$124,000 for his failure to pay income taxes when owed. Although he has a payment agreement, he has reneged on the agreement twice, seeking an offer in compromise or a reduction of his debt. He accumulated five accounts, totaling over \$37,000, that were charged-off. His documentary evidence shows he established a payment agreement and has been making payments on SOR ¶ 1.f since 2018. He settled and paid off SOR ¶ 1.g in March 2022, SOR ¶ 1.h in March 2022, SOR ¶ 1.i in April 2022, and SOR ¶ 1.j was paid before the SOR was issued in July 2021. The facts in the record establish the above disqualifying conditions in AG ¶¶ 19(a), (c), (f), and (i), requiring additional inquiry about the possible applicability of mitigating conditions.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file of pay the amounts owed and is in compliance with those arrangements.

AG ¶¶ 20(a) and (g) are partially applicable because Applicant has resolved the SOR debts and established a payment plan with the IRS. They are not fully applicable and do not mitigate the security concerns because Applicant's questionable behavior is recent, occurred frequently, it is likely to recur, and it still casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(b) is not applicable because Applicant's financial problems are not due to circumstances beyond his control. His periods of unemployment, underemployment, legal separation, and debts were due to his gambling problems. Additionally, his evidence is insufficient to show that he was financially responsible under his circumstances.

AG ¶ 20(c) is not applicable because Applicant failed to present evidence to show that he received or is receiving financial counseling. Moreover, Applicant's financial problems resulted from his gambling. He failed to submit evidence to corroborate his claims of consistent attendance to GA and communications with a sponsor.

AG ¶ 20(d) is partially applicable. Applicant's documentary evidence shows that he established a payment plan with the IRS and is complying with it. It does not fully apply because he stopped his payment plan with the IRS twice. He receives credit for settling and making payments to the creditors of the accounts alleged in SOR ¶ 1.f and SOR ¶ 1.j before he received the SOR. All the other SOR delinquent accounts were paid after the SOR was issued.

Applicant receives credit for his military service and recent efforts to pay or resolve his delinquent debts after receipt of the SOR. Notwithstanding, I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His evidence is insufficient to explain why he was unable to address his delinquent accounts more diligently. There is insufficient evidence for a determination that his financial problems will be resolved within a reasonable period. His financial issues are the result of his gambling habit, and they are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find that the security concerns arising out of Applicant's delinquent debts are not mitigated.

### **Guideline E - Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to 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 classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes one condition that could raise a security concern and be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant information from any personal security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

In July and August 2017, Applicant was aware of his gambling problem and sent several emails referencing gambling transactions, a cash withdrawal from a monetary investment vehicle, and he communicated relationship problems speaking of separation, filing bankruptcy, and credit card debt. (GE 12) When he submitted his 2018 SCA, he knew he had accounts that were delinquent, as a result of his gambling problem, and that his wife threatened him with legal separation. He deliberately falsified his 2018 SCA when he answered NO and failed to disclose that he was experiencing financial problems due to his gambling. He also admitted he engaged in significant financial transactions to fund his gambling and pay gambling debt. His lack of candor and dishonesty demonstrate questionable judgment, unreliability, and an unwillingness to comply with rules and regulations, establishing the above disqualifying condition.

AG ¶ 17 provides seven conditions that could mitigate security concerns raised under this guideline. Only two of those mitigating conditions are potentially applicable to the facts in this case:

(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

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

After thorough consideration of the facts, the above mitigating conditions are not supported by the facts in this case, and they are not applicable. Applicant's evidence is insufficient to fully establish any mitigating factors under AG ¶ 17.

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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.

Under AG ¶ 2(c), 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. I have incorporated my comments under Guidelines F and E in my whole-person analysis.

Applicant, 59, has been working for federal contractors since at least 2004, while possessing eligibility for a clearance. He served eight years in the Army and received an honorable discharge. He started the process to pay or resolve most of the delinquent accounts alleged in the SOR after receipt of the SOR. He has made a good start to establish his future financial responsibility. Notwithstanding, financial considerations security concerns are not mitigated at this time. He should have been more diligent addressing and resolving his delinquent accounts, in particular addressing his large debt to the IRS. Moreover, Applicant's financial problems were caused by his gambling problem. His evidence is insufficient to show that his gambling is under control, or that he has been receiving sufficient counseling to prevent recurrence. Additionally, he failed to disclose his gambling and financial problems in his 2018 SCA. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations and personal conduct security concerns.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)).

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of his past-due debt and a better track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

### **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 and 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraphs 1.d-1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant

### **Conclusion**

It is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

---

JUAN J. RIVERA  
Administrative Judge