



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



In the matter of:)
)
) ISCR Case No. 20-03832
)
Applicant for Security Clearance)

Appearances

For Government: Rhett E. Petcher, Esq., Department Counsel
For Applicant: Brian A. Laird, Esq.

06/21/2022

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On March 15, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on March 26, 2021, and requested a hearing before an administrative judge. The case was assigned to me on March 30, 2022.

The hearing was convened as scheduled on May 27, 2022. Government Exhibits (GE) 1 through 8 were admitted in evidence without objection. Applicant testified and submitted Applicant’s Exhibits (AE) A through T, which were admitted without objection.

Findings of Fact

Applicant is a 66-year-old employee of a defense contractor, where he has worked since 2002. He worked for another defense contractor for almost 20 years before his current job. He served on active duty in the U.S. military from 1975 until he was honorably discharged in 1978. He seeks to retain a security clearance, which he has held for about 40 years. He has a bachelor's degree that he earned in 1991. He has never married, but he has a long-time girlfriend. He has no children. (Tr. at 11-13, 16-20; Applicant's response to SOR; GE 1)

Applicant started playing the slot machines at a local casino in about 1998. In about 2009, his gambling started to become a problem. (Tr. at 23, 37-51; Applicant's response to SOR; GE 1-4) He reported himself to his security office in June 2010, who reported the information to the DOD as follows:

Today, 6/24/10, [Applicant] self reported a gambling problem. He has sought treatment through Gamblers Anonymous. [Applicant] attended his first meeting on 6/23/10. His gambling began a year ago and has resulted in going from no debt to approximately \$100,000 debt in the form of credit card, home equity and 401k loans. [Applicant] believes that by recognizing his problem and starting treatment he is not an adverse threat to his country or company. He also believes he can retire his debt in 5 years and be debt free again. (GE 4)

Applicant stopped gambling for a period, and then resumed. He went through several periods of not gambling, followed by gambling. His gambling became problematic again in about 2018. He lost about \$200,000 in 2018. He took out money from his 401(k) retirement account and credit cards. He was unable to pay his federal income taxes and other debts. (Tr. at 42-44, 48-51, 55; Applicant's response to SOR; GE 1-3, 5-8)

The SOR alleges Applicant's gambling issues (SOR ¶¶ 1.e - 1.g); \$14,132 owed to the IRS for tax year 2018 (SOR ¶ 1.a); and three delinquent consumer debts totaling about \$49,000 (SOR ¶¶ 1.b - 1.d).

Applicant attributed his gambling problems to a medical condition that requires medication. One of the side effects of the medication is compulsive behavior. He stated that he is still on the medication, but his doctor prescribed another medication in about 2019, which controls the compulsive behavior. (Tr. at 23-26, 59; Applicant's response to SOR; GE 1-3)

Applicant reported his gambling issues on the Questionnaire for National Security Positions (SF-86) he submitted in April 2020. He indicated that after two years of not gambling from about 2016 to early 2018, he stopped his counseling; the symptoms of his condition became aggravated; and he increased the medication that causes compulsive behavior. He relapsed from February to November 2018.

Applicant returned to counseling, and the changes in his medication helped control his gambling. He attended Gamblers Anonymous meetings. He reported on the SF 86 that he had not gambled since 2018, and noted: "I believe I have found the correct treatment plan for my condition. With this treatment plan I am not gambling nor feel the urge to gamble and am recovering from my financial situation." Applicant wrote in his response to the SOR: "had I found this treatment plan 10 years earlier I am convinced I would have saved \$300,000." (Applicant's response to SOR; GE 1)

Applicant started repaying his debts in 2019. He paid or settled several debts before the SOR was issued, and he made monthly payments to the SOR creditors. He entered into an installment agreement with the IRS in 2020. (Tr. at 27; Applicant's response to SOR; GE 1, 3, 5-8; AE A-F)

Applicant refinanced the mortgage on his home, where he has lived since 1986, and he was able to pay or settle all of his debts. He paid the IRS \$11,594 in July 2021 to completely pay his back taxes. He paid \$14,711 and \$12,155 in July 2021 to pay the remaining amounts owed on the debts alleged in SOR ¶¶ 1.b and 1.c. He settled the debt alleged in SOR ¶ 1.d for \$7,560 through 11 monthly payments of \$630, which he completed in February 2021. (Tr. at 27-31, 56; Applicant's response to SOR; GE 1,3, 5-8; AE A-E)

Applicant's finances are currently stable. He earns a good salary; he received financial counseling; he maintains a budget; and he is paying his bills. He still has about \$100,000 in equity in his home, and he is rebuilding his retirement account. (Tr. at 31-34, 57; Applicant's response to SOR; GE 5-8; AE F-K)

Applicant testified that he is still on the medication that "totally eliminated" the compulsive behavior associated with the medication prescribed for his condition. He attends counseling and Gamblers Anonymous. He now feels "100 percent" in control. He estimates that he currently goes to the casino and gambles about once a month. He last gambled in a casino about two weeks before the hearing, when he "probably lost \$500." (Tr. at 24-26, 36, 44-55)

Applicant submitted documents and letters attesting to his excellent job performance. He is considered a valued and trusted employee. (AE L-T)

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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 national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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* EO 12968, Section 3.1(b) (listing multiple 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 fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required; and
- (h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts.

Applicant has a history of financial problems resulting from his gambling, including unpaid federal income taxes and delinquent debts. AG ¶¶ 19(a), 19(c), 19(f), and 19(h) are applicable.

SOR ¶ 1.e alleges that from 2009 through 2019, Applicant “engaged in significant financial transactions to fund gambling.” SOR ¶ 1.f alleges that in 2009 and 2010, Applicant “incurred a total of approximately \$100,000.00 in debt from funding gambling.” SOR ¶ 1.g alleges that in 2018 and 2019, Applicant “incurred a total of approximately \$200,000.00 in debt from funding gambling.” SOR ¶ 1.e alleges all of the conduct covered by SOR ¶¶ 1.f and 1.g. As such, they are duplicate allegations. When the same conduct is alleged more than once in the SOR under the same guideline, at least one of the duplicative allegations should be resolved in Applicant’s favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). SOR ¶ 1.e is concluded for Applicant.

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;
- (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; and

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

Applicant received counseling for his finances and additional counseling for his gambling issues. He paid his back taxes, and he paid or settled all of the SOR debts. His current finances are sound. AG ¶¶ 20(d) and 20(g) are applicable to the back taxes and delinquent debts.

The real issue in this case is gambling, which, like alcohol, is not a problem in and of itself. It only becomes a problem for one's security clearance when it becomes a problem in one's life. Applicant claims that gambling is no longer a problem for him. I wish him well, and I hope he is right, but it speaks volumes that, knowing his security clearance is on the line primarily because of his gambling, he went to a casino and gambled two weeks before the hearing.

I have doubts that Applicant can prevent his gambling from once again becoming a problem. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." Security concerns raised by Applicant's problematic gambling are not mitigated.

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 Guideline F in my whole-person analysis. I also considered Applicant's favorable character evidence.

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 security concerns.

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:

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|---------------------------|-------------------|
| Paragraph 1, Guideline F: | Against Applicant |
| Subparagraphs 1.a-1.e: | For Applicant |
| Subparagraphs 1.f-1.g: | Against 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.

Edward W. Loughran
Administrative Judge