



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



In the matter of:)	
)	
)	ISCR Case No. 20-02406
)	
Applicant for Security Clearance)	

Appearances

For Government: John Lynch, Department Counsel
 For Applicant: *Pro se*
 02/28/2023

Decision

BENSON, Pamela C., Administrative Judge:

Some of Applicant’s financial problems were triggered by circumstances beyond his control, and some of his financial indebtedness can be attributed to poor decisions. He was involved in fraudulent financial practices, and he has not filed his 2018 state and federal income tax returns. He filed for bankruptcy protection shortly after his receipt of the SOR, and it remains pending as of the close of the record. He did not sufficiently mitigate the financial considerations and personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On December 23, 2021, the Defense Counterintelligence and Security Agency (DCSA) 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). The CAF took action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implemented by the DOD on June 8, 2017.

In Applicant’s July 17, 2022 response to the SOR (Answer), he admitted all 14 SOR allegations under Guideline F, and he denied the single cross-allegation under

Guideline E, because he mistakenly thought it concerned falsification. (SOR ¶ 2.a.) He explained that his financial problems were triggered by his spouse's period of unemployment, and he has since taken action to ensure all debts are paid. He requested a decision by a Defense Office of Hearings and Appeals (DOHA) administrative judge based upon the written record in lieu of a hearing. (Answer)

On October 24, 2022, Department Counsel submitted a file of relevant material (FORM) and provided a complete copy to Applicant. The FORM includes Government exhibits (Items) 1 through 13. On October 27, 2022, Applicant received the FORM and its attachments. He did not submit a response to the FORM within 30 days of receipt. He did not raise any objections to the admissibility of any of the Items. The case was assigned to me on January 26, 2023 and the record closed. I have admitted Items 1 through 13 into evidence.

Findings of Fact

Applicant is 36 years old. He married his first wife in 2006 and was divorced in 2009. He has been married to his second wife since August 2011. He has a 17-year-old son. He earned a bachelor's degree in 2015 and a master's degree in 2017. He enlisted in the U.S. Air Force and served on active duty from September 2006 until his medical separation in October 2011, under honorable conditions. He has worked for federal contractors since 2012, and he was granted a top secret security clearance that same year. Since April 2017, he has been employed as a database administrator for a federal contractor. (Items 3 and 4)

Applicant received the SOR in February 2022. The first ten allegations, SOR ¶¶ 1.a. through 1.j, allege delinquent debts totaling \$53,247. Applicant disclosed during his March 2019 background interview that beginning in 2017, his wife had a medical issue that caused numerous unexpected medical bills. In addition, his wife was laid off by her employer, which also contributed to their financial problems. In June 2018, his wife found full-time employment, which significantly helped in their efforts to pay off their debts. They have made a conscious effort to reduce their spending, focus on paying bills, and reducing their entertainment expenses, such as going out to the casino for date night. Applicant also admitted in his Answer that he did not handle the family finances well during the time their bills became delinquent. (Items 2 and 4)

On March 22, 2022, Applicant filed for Chapter 13 bankruptcy protection. His Chapter 13 plan, which was confirmed by the court on June 14, 2022, requires him to make 60 monthly payments of about \$1,900. His payment plan to the trustee will continue until mid-2027, and at that time any remaining unsecured nonpriority debts can be discharged. (Item 6)

SOR ¶ 1.b. alleges that Applicant issued a check in the amount of \$200, that was returned for insufficient funds, and referred for collection.

SOR ¶ 1.n. alleges that between 2016 and 2018, Applicant repeatedly engaged in check kiting by presenting over \$100,000 in checks without sufficient funds. The financial scheme also included him making ATM withdrawals and cash deposits. Applicant, using two different bank accounts, took advantage of the fact that a financial institution takes days to process a check. Check kiting, by definition, is the illegal practice involving the fraudulent use of a financial instrument to obtain additional credit that is not authorized, or for which there are insufficient funds. He stopped in 2018, after the bank admonished him for his involvement in deceptive financial practices. Both of the SOR allegations (¶¶ 1.b and 1.n.) were cross-alleged under Guideline E. (SOR ¶ 2.a.)

Applicant did not provide many details or documentation about the current status of his delinquent debts. Department Counsel reported, however, that many of these details can be gleaned from his bankruptcy paperwork in the record. According to Applicant's April 18, 2022 Bankruptcy Schedule D, the amount he owed on his delinquent mortgage, \$174,701, is the same amount he owed in September 2020. (SOR ¶ 1.g) He did reduce three of the debts, such as SOR ¶ 1.d (\$8,830 which was reduced to \$8,030); SOR ¶ 1.e (\$11,272 which was reduced to \$9,172), and SOR ¶ 1.f (originally \$1,651 now \$51). The Bankruptcy Schedule E/F indicates that the outstanding amounts alleged in SOR ¶¶ 1.a, 1.b, 1.c, 1.h, 1.i, and 1.j, remain unchanged. (Items 1 and 6)

Applicant admitted in his Answer that he had not filed his state or Federal income tax returns for 2018. (SOR ¶¶ 1.k and 1.l.) He also admitted he had unpaid Federal taxes (amount not alleged) for tax year 2019, and he listed that he had arranged a payment plan with the Internal Revenue Service (IRS). He did not provide supporting documentation of the IRS payment agreement, or any recorded payments. (SOR ¶ 1.m) According to the Bankruptcy Schedule E/F, he declared that he owed a combined total amount of \$6,962 in delinquent Federal income taxes for 2019 and 2020 together. (Items 2 and 6)

Applicant admitted to gambling and he acknowledged that he made approximately \$20,000 of cash withdrawals at one or more casinos, between 2016 to 2018, the period he was involved in check kiting. He estimated that he visited a casino once or twice per month from 2015 through 2018, spending as much as \$100 to \$200 per visit. In 2019 and 2020, he increased his visits to casino(s) every weekend, spending approximately \$200 per visit. He also stated in his December 2020 response to interrogatories that he had reported gambling losses on two other income tax returns, but he was unable to find the tax records. The bankruptcy records indicate that his gambling losses totaled \$23,056 in 2021. (Items 4, 5 and 6)

Policies

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. . . .

Conditions that may raise financial considerations security concerns are provided under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators;
- (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;
- (g) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that are inconsistent with known legal sources of income; and
- (h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts.

Applicant's admissions, the March 2022 bankruptcy records, and credit reports in evidence support the financial security concerns alleged in the SOR. AG ¶¶ 19(a), 19(b), 19(c), 19(d), 19(e), 19(f), 19(g), and 19(h) apply.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable in this case:

- (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 resolve 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 bears the burdens of production and persuasion in mitigation. An applicant is not held to a standard of perfection in his or her debt-resolution efforts or required to be debt-free. "Rather, all that is required is than an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan." ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014).

Applicant attributed his financial problems to circumstances beyond his control – his wife had a medical issue that caused numerous unexpected medical bills in 2017. In addition, his wife was unemployed until June 2018, which also contributed to their financial complications. Under AG ¶ 20(b), Applicant must not only establish circumstances beyond his control that contributed to his financial problems, he must also demonstrate that he acted responsibly to address and resolve her delinquent accounts.

From approximately 2016 to 2018, Applicant became involved in check kiting, presenting over \$100,000 in checks between two banking institutions, when those checks did not have sufficient funds. Following an investigation by the bank, he was admonished to cease this deceptive scheme. There is no evidence that he has engaged in this conduct since 2018. Even so, his decision to engage in dishonest conduct during a financial setback and while he was engaged in habitual gambling casts doubt on his reliability, trustworthiness, and good judgment in the overall picture of his financial management over the years.

Applicant and his wife have been fully employed since June 2018. He stated during his March 2019 background interview that her employment was allowing them to address and resolve their delinquent bills. He also said that they were working on reducing their entertainment expenses, such as going to the casino on date night. His December

2020 response to interrogatories showed that he continued to gamble, and he had actually increased his visits and overall spending at the casino(s) in 2019 and 2020. Instead of making good-faith efforts to resolve his delinquent accounts, he accumulated gambling losses totaling \$23,056 in tax year 2021. This money might have been used to help resolve about half of the debts alleged in the SOR. He also admitted reporting gambling losses on two other income tax returns, but he was unable to find the tax records.

Applicant has not filed his 2018 state and Federal income tax returns. He claimed to have a payment plan in place with the IRS for his 2019 delinquent taxes, but he failed to provide supporting documentation. He declared past-due taxes for tax years 2019 and 2020 in his pending March 2022 Chapter 13 bankruptcy case.

Applicant was aware of the Government's concern with his financial problems after his background interview in March 2019. He told the investigator that he and his wife were addressing their financial obligations. There is evidence of some payments on three SOR debts that continue to have outstanding balances. He has not sufficiently explained why he has not been able to make better progress over the years in addressing his delinquent debts.

Applicant received the SOR in February 2022, and he filed for bankruptcy in March 2022. His Chapter 13 plan requires him to make 60 monthly payments of \$1,900 to the bankruptcy trustee, which should end in mid-2027. There is insufficient evidence available to support that Applicant will be able, or willing, to make all of the monthly payments over the next four years, especially considering his penchant for gambling. None of the mitigating conditions apply. Overall, I find that Applicant's financial problems reflect poorly on his reliability and trustworthiness. Guideline F security concerns are not mitigated.

Guideline E: Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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. . . .

AG ¶ 16 lists a condition that could raise a security concern and may be disqualifying in this case relating to Applicant's dishonored check and check kiting practices, as set forth below:

(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 individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(3) a pattern of dishonesty or rule violations.

The SOR alleges and the record establishes that Applicant has a dishonored check that is unresolved, and he was involved in checking kiting from 2016 to 2018, by presenting over \$100,000 in checks that did not have sufficient funds. AG ¶ 16(d)(3) applies.

AG ¶ 17 lists a potential condition that could mitigate security concerns as follows:

(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.

Applicant's check kiting stopped in 2018, after he was confronted by the bank. Approximately five years have passed since he was involved in check kiting. There is one instance of writing a dishonored check in the SOR; however, the date he wrote the check is unknown. I find that enough time has passed without repeated incidents, and that future dishonest financial practices are unlikely to recur. Personal conduct security concerns are 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 considered the potentially

disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant's financial problems were triggered, in part, by circumstances beyond his control. His financial problems related to his fondness for gambling is certainly a circumstance fully within his power and control. Whether he exerts that control, especially after being placed on notice in March 2019 that he had a significant number of delinquent accounts to resolve, is an important detail to note. Applicant disclosed that in 2019 and 2020, he had increased his visits to the casino(s), spending about \$200 on each visit. In 2021, his gambling losses of \$23,056, were reported on his 2021 income tax return. He also admitted he had reported gambling losses on two other income tax returns, but the amounts and specific tax years were unknown. He failed to demonstrate that he acted responsibly, such as using his gambling money to go towards paying his outstanding creditors. He did not sufficiently mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

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.-1.n.:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge