



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-00052
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jenny Bayer, Esq., and Brittany White, Esq., Department Counsel  
For Applicant: *Pro se*

03/16/2023

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**Decision**

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DORSEY, Benjamin R., Administrative Judge:

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

**Statement of the Case**

On June 28, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant provided a response to the SOR (Answer) on August 10, 2022, and requested a hearing before an administrative judge. The case was assigned to me on December 1, 2022.

The hearing was convened as scheduled on February 23, 2023. I admitted Government Exhibits (GE) 1 through 6 without objection. Applicant testified but did not provide documentary evidence. I received a transcript (Tr.) of the hearing on March 2, 2023.

## Findings of Fact

Applicant is a 58-year-old employee of a government contractor for whom he has worked since August 2020. He was unemployed for about four months after he was laid off in April 2020. Prior to his current employment, he worked for another government contractor from 2009 until April 2020. He married in 1997, but he has been legally separated since October 2019. He and his estranged spouse have initiated divorce proceedings, but the divorce has not been finalized. He has a 20-year-old daughter. He has an associate's degree, has taken other college courses, but he has not earned another degree. (Tr. 12, 18-22, 46; GE 1, 6)

In the SOR, the Government alleged Applicant's 20 delinquent credit cards and personal loans totaling approximately \$141,000 (SOR ¶¶ 1.c-1.v). It also alleged that he incurred these debts because of gambling losses (SOR ¶¶ 1.a and 1.b). Applicant admitted the SOR allegations. His admissions are adopted as findings of fact. (Tr. 13, 16-17, 23-24; SOR; Answer; GE 1-6)

For at least 20 years, Applicant has lost a significant amount of money while gambling at casinos. To fund his gambling, he took out personal loans and opened credit cards. The SOR debts are all a result of his gambling. He hid his gambling and the money he lost from his wife until about 2019. His gambling led to the breakdown of his marriage. While it is not alleged in his SOR, he also borrowed \$10,000 from his sisters to fund his gambling. He was delinquent on the mortgage for his marital residence twice because of his gambling losses. Any adverse information not alleged in the SOR, such as Applicant owing money to his sisters because of his gambling or his mortgage delinquencies, cannot be used for disqualification purposes; however, it may be considered in assessing an applicant's credibility; in evaluating an applicant's evidence of extenuation, mitigation, or changed circumstances; in considering whether the applicant has demonstrated successful rehabilitation; and in applying the whole-person concept. (ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017)). He has not taken any financial counseling or counseling for his gambling problem. He signed up for counseling for his gambling problem in early 2020, but it was cancelled because of the pandemic. He acknowledged that he signed up for this gambling counseling because he realized his security clearance was in jeopardy. (Tr. 25-33; 44-46, 50; Answer; GE 1, 6)

Applicant acknowledged that he has a problem with gambling, but he claimed that he will not gamble again. He tried to stop gambling before but failed. As of the DOHA hearing, he last gambled in December 2022, when he went to a casino. He acknowledged that part of the reason he has not been gambling as much is that he does not have the money to do so. In May 2022, he entered into an agreement with a debt consolidation company to pay off his SOR debts. He paid the debt consolidation company a little over \$1,000 for disbursement to the SOR creditors. However, in June 2022, he withdrew from the agreement because he wanted to pay back the \$10,000 he owed to his sisters first. He provided no evidence that any of the money he provided to the debt consolidation company was disbursed to creditors. He provided no documents to corroborate his dealings with the debt consolidation company or any payments to creditors made on his behalf. He claimed that he plans to work with a credit

consolidation company again to pay off his delinquencies. (Tr. 16-17, 22-23, 32-38, 50-51; GE 1-6)

Applicant claimed that he satisfied the debt in SOR ¶ 1.f through an involuntary garnishment on an unspecified date. He provided no documentation to corroborate this information and the Government's credit reports do not reflect that this debt has been satisfied. The 2023 credit report reflects a lower balance than the SOR. I find he is resolving the debt in SOR ¶ 1.f through an involuntary garnishment. Except for the debt in SOR ¶ 1.u, he has had no contact with any of the creditors of the SOR debts. The creditor for the debt in SOR ¶ 1.u contacted him in about November 2022, but he did not make a payment arrangement because he did not have enough money to do so. Except for the debt in SOR ¶ 1.f, he has not resolved any of the SOR debts. He claimed that in about December 2022, he paid his sisters back the \$10,000 he owed them. He did not corroborate this claim with documentation. (Tr. 39-46, 50; GE 1-6)

### **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;
- (h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and
- (i) concealing gambling losses, family conflict, or other problems caused by gambling.

Applicant has 20 delinquent debts totaling about \$141,000 that resulted from gambling losses. For years, he hid his gambling-related financial problems from his

wife. His gambling led to the breakup of his marriage. The evidence is sufficient to raise the above disqualifying conditions, thereby shifting the burden to Applicant to provide evidence in mitigation.

The allegations contained in SOR ¶ 1.b reference a partial sum of Applicant's gambling losses that are listed in the other SOR allegations. That paragraph is duplicative of the other SOR allegations. I find in Applicant's favor with respect to the allegations in SOR ¶ 1.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; 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.

Applicant's financial delinquencies are ongoing and therefore recent. The evidence does not show that the debts are resolved or are under control. He has not established a track record of financial responsibility. He has not taken counseling for gambling, and he gambled at a casino as recently as December 2022 after trying to stop. He has not provided sufficient evidence that his gambling problem is under control. I cannot find his financial issues are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant's financial issues arose because of his gambling. These conditions were not beyond his control. The only payments he has made on an SOR debt have been through an involuntary garnishment. Payments through involuntary garnishment

do not establish a good-faith payment. He has not made any payment on the 19 other SOR debts. AG ¶ 20(b) and AG ¶ 20(d) do not apply.

While Applicant engaged a debt consolidation company, there is no evidence that this company is a legitimate and credible source of financial counseling. Moreover, for the same reasons AG ¶ 20(a) does not apply, I conclude that his financial problems are not being resolved and are not under control. AG ¶ 20(c) does not apply.

Applicant has not disputed the legitimacy of any of the SOR debts. AG ¶ 20(e) does not apply. None of the financial considerations mitigating conditions apply. He has not mitigated the financial considerations security concerns.

### **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.

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:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.v:	Against Applicant

## **Conclusion**

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

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Benjamin R. Dorsey  
Administrative Judge