



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 13-01343
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Appellant: Nicole A. Smith, Esq.

08/26/2014

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the security concerns raised by her past financial problems. She turned to gambling to deal with personal issues. Over the course of two years, she gambled away a substantial sum of her family’s savings and accumulated about \$40,000 in debts. She voluntarily sought professional help for her gambling problem and has not gambled in five years. She satisfied her debts and her finances are under control. Clearance is granted.

Statement of the Case

On February 21, 2014, the Department of Defense (DOD), in accordance with DOD Directive 5220.6, as amended (Directive), issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations). On March 26, 2014, Applicant answered the SOR and requested a hearing to establish her continued eligibility for access to classified information.

On June 30, 2014, Department Counsel notified the Hearing Office that the Government was ready to proceed with a hearing in the case. On July 16, 2014, a notice of hearing was issued setting the hearing for August 5, 2014. The hearing was

held as scheduled. Department Counsel offered exhibits (Gx.) 1 – 5, which were admitted into evidence without objection. Applicant testified, called her husband as a witness, and offered exhibits (Ax.) A – G, which were admitted without objection. The hearing transcript (Tr.) was received on August 13, 2014.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact:

Applicant, who is in her forties, is married and has three children. She has been working for her current employer for 25 years, and her recent performance appraisal reflects that she “exceeds” the requirements of her position. (Ax. F at 6) She has held a security clearance since 2006.¹

Over the past dozen years, Applicant has experienced two periods of financial trouble. The first occurred in about 2001, when Applicant and her husband hired a contractor to renovate the home they have owned and lived in for the past twenty years. The contractor absconded with their money without completing the renovations. Applicant and her husband used credit cards to complete the project. They eventually fell behind on their credit card payments and, upon the advice of counsel, filed for Chapter 7 bankruptcy. Their debts were discharged through bankruptcy in 2003.²

Applicant’s finances rebounded and remained relatively strong until 2007, when she turned to gambling as a way to escape problems at work and in her personal life. Also, Applicant was going through a midlife crisis and gambling became a way to infuse some excitement in her life and distract from the issues she was going through. Around the same time, Applicant and her husband inherited a piece of property and purchased several investment properties, which they rented to generate extra income.³

Applicant’s frequency and scope of gambling and her losses steadily increased. She accepted lines of credit offered by the casinos in order to continue to gamble. Between June 2007 and March 2008, currency transaction reports submitted by the casinos to the U.S. Government reflect 25 transactions, both winnings and losses, by Applicant totaling over \$425,000. (Gx. 3) Applicant estimates that between 2007 and 2009 she lost about \$120,000, depleting all of her family’s savings. She testified that she and her family were “living paycheck to paycheck.” (Tr. at 66) After her investment properties stopped generating sufficient rental income, she became delinquent in repaying her gambling debts. In 2009, the unpaid gambling debts resulted in judgments totaling about \$40,000.⁴

¹ Tr. at 34-35, 48, 79-85, 115; Gx. 1.

² Tr. at 17-19; 33-34, 38, 68-72.

³ Tr. at 17-19, 35-37, 48-52, 55-56, 86-96, 116.

⁴ Tr. at 19-27, 38-41, 53-66, 101-104, 106, 110-113, 116-117.

Applicant voluntarily reported the judgments to her facility security officer.⁵ Based on the security briefings she received over the years, Applicant recognized the judgments constituted a significant change in her financial situation that needed to be reported.⁶ She also voluntarily disclosed her gambling debts on her recent security clearance application.⁷

In 2009, after revealing her gambling problem to a close friend, Applicant began attending Gambler's Anonymous (GA). She stopped gambling and paid her gambling debts through a combination of garnishments and negotiated settlements. She returned to school, earning a bachelor's degree in 2009 and a master's degree in 2013. She is now heavily involved in religious and community activities, and is an avid cyclist. She recognizes her past errors in judgment and continues to attend GA.⁸ One of her GA sponsors, who retired after nearly 40 years of federal service and was a member of the Senior Executive Service, submitted a character reference "strongly urging that (Applicant) be allowed to retain her clearance" because of the positive steps he has witnessed her take "to grow and recover."⁹

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are only eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant's eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a common sense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an 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." Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

⁵ Tr. at 75.

⁶ Tr. at 114-115.

⁷ Tr. at 115; Gx. 1 at 37.

⁸ Tr. at 27-28, 44-45, 61, 66-68, 74-79, 96-101, 105-111, 114-115, 118; Gx. 2; Ax. C, Ax D at 2.

⁹ Ax. D at 1.

In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b). Moreover, "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.¹⁰ However, a judge must decide each case based on its own merits because there is no *per se* rule requiring disqualification.¹¹

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. 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 an 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.¹²

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." E.O. 10865 § 7.¹³ Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

Analysis

Guideline F, Financial Considerations

The security concern regarding an individual with financial problems is explained at AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or

¹⁰ See *also*, ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) ("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.").

¹¹ ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

¹² ISCR Case No. 11-13626 (App. Bd. Nov. 7, 2013) (security clearance determinations require administrative judges to make predictive judgments about an individual's ability and willingness to protect and safeguard classified information). See *also*, ISCR Case No. 11-12202 at 5 (A judge's predictive determination "is made by identifying and then evaluating behaviors or circumstances that have an articulable nexus to the ability or willingness to safeguard classified information.").

¹³ See *also*, ISCR Case No. 11-13626 at 4 (App. Bd. July 25, 2014) ("an adverse decision under the Directive is not a determination that the applicant is disloyal. Rather, such a decision signifies that the applicant has engaged in conduct or has otherwise experienced circumstances that raise questions about his or her judgment and reliability. Such questions, if not mitigated by the applicant, can impugn his or her fitness for access to national secrets.").

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.

Applicant's gambling problem resulted in the loss of a significant portion of her family's life savings and generated a substantial amount of gambling debt. Her reckless conduct raises serious concerns about her security suitability. Applicant's gambling problem and the resulting judgments, as well as her past financial problems, establish the following disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations;

AG ¶ 19(f): financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern; and

AG ¶ 19(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.

The guideline also lists a number of conditions that could mitigate the concern. The mitigating conditions that are potentially relevant in this case are:

AG ¶ 20(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;

AG ¶ 20(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; and

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's compulsive gambling habit took place over a relatively short period of time from 2007 to 2009. Although the amount she gambled and the frequency of her gambling at casinos during that two-year window raises concerns about her suitability, Applicant voluntarily sought professional help and has not engaged in similar conduct in five years. During the past five years, she has also taken positive steps to change the internal and external factors that led her to gambling in the first place. She returned to

school, earning her undergraduate and graduate degrees. She is now heavily involved in volunteer and other constructive activities, and continues to attend GA. She addressed and resolved the gambling debts that she amassed. She has not incurred any other delinquent debt and her current financial situation is good.¹⁴ AG ¶¶ 20(a), 20(c), and 20(d) apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).¹⁵

Applicant turned to gambling to deal with problems in her life. She became intoxicated by the "high-roller" lifestyle and her judgment became seriously impaired. She gambled away a significant portion of the money she and her husband had saved and accumulated substantial gambling debt that took years to resolve.

Applicant's gambling addiction and the significant debts she incurred left her potentially vulnerable to undue pressure, coercion, and duress. She began mitigating these concerns by immediately and voluntarily reporting her gambling debts to her security officer. By doing so, Applicant also demonstrated that she can be trusted to place her security obligations and responsibilities over her own interests. She fully mitigated the security concerns about her potential vulnerability by fully resolving the gambling debts.

Applicant's past conduct also raised serious questions about her judgment and reliability. However, five years have passed since she last gambled. She recognizes the mistakes she made in the past and has taken positive steps not to repeat them in the future. She has filled her life with positive activities, such as furthering her education and volunteering her time to help others and her community. Of particular note, Applicant voluntarily sought professional help for her gambling addiction and continues to attend GA. Applicant presented significant, positive behavioral changes indicative of a lifestyle antithetical to the type of gambling that raised concerns about her suitability to

¹⁴ Applicant's past financial problems that led her to file and have her debts discharged through bankruptcy in 2003 were due to matters beyond her control. Applicant's strong financial position in the years following the bankruptcy allowed her and her family to weather, to a point, the financial harm caused by her gambling. AG ¶¶ 20(a) and 20(b).

¹⁵ The non-exhaustive list of adjudicative factors are: (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.

continue to hold a security clearance.¹⁶ For all the reasons noted herein, I find that Applicant met her heavy burden of mitigating the security concerns raised by her past financial problems. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility for access to classified information.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a – 1.e: **For Applicant**

Conclusion

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge

¹⁶ ISCR Case No. 12-04806 (App. Bd. July 3, 2014) (affirming grant of a clearance where individual provided clear evidence of financial reform).