

DATE: April 29, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-23558

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant lost about \$15,000, or about \$400 per month, from gambling during the period 1995~1998. As a result of this gambling, the Applicant was forced to file for the protection of bankruptcy in April of 1998. Since filing for bankruptcy, the Applicant has reduced his gambling by 90%, gaming at most \$40 each month. In the last five years, he has had no further past due indebtedness, and has over \$7,000 in the bank. Clearance is granted.

STATEMENT OF THE CASE

On December 11, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on or about January 13, 2003.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant aterial (FORM) on February 13, 2003. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy on February 21, 2003, and Applicant's Response was received on March 19, 2003. The case was received by the undersigned for resolution on March 25, 2003. The issues raised here are whether the Applicant's past financial difficulties militate against the granting of a security clearance.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the File of Relevant Material and Applicant's Response. The Applicant is 56 years of age, and is employed by a defense contractor who seeks a security

clearance on behalf of the Applicant.

Guideline F - Financial Considerations

1.a. and 1.b. From 1995~1998, the Applicant legally gambled about \$400 each month (Government Exhibit (GX) 6 at page 1). He played video poker machines, and during this three year period lost about \$15,000 gambling (GX 3, and GX 6 at page 1). As a result of the debts he accrued due to gambling, the Applicant was forced to file for the protection of bankruptcy in April of 1998 (*id*, and GX 8). About \$8,000 in debt was discharged (*ibid*).

In the last five years, the Applicant has reduced his video poker gaming significantly, spending at most \$40 a month (GX 3). As of the last four months of 2002, he has "not spent anything on the poker machines or gambling" (*id*). At present, he has no past due indebtedness, and has "over \$7,000 in the bank" (Response).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern; which must be given consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. Conditions most pertinent to evaluation of this case are:

Financial Considerations

Conditions that could raise a security concern and may be disqualifying include:

1. A history of not meeting financial obligations;
3. Inability or unwillingness to satisfy debts;
5. Financial problems that are linked to gambling

Condition that could mitigate security concerns include:

3. The behavior was not recent;
6. The individual initiated a good faith effort to repay overdue creditors or otherwise resolved debts.

As set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must make out a case under Guideline F (financial considerations), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places.

CONCLUSIONS

As a result of gambling losses during the period 1995~1998, the Applicant was forced to seek the protection of bankruptcy in April of 1998, by which he discharged about \$8,000 in debt. He had lost about \$15,000, gaming on poker video machines. Since his bankruptcy filing more than five years ago, the Applicant has incurred no further past due indebtedness, has reduced his gaming significantly, and has in excess of \$7,000 in the bank. I therefore conclude that his past financial difficulties are not of present security significance; and as such, Guideline F is found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his past financial difficulties. The Applicant has thus met the mitigating conditions of Guideline F, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline F.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

a. For the Applicant.

b. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge