

DATE: April 25, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-25724

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 46 years old and has worked for a federal contractor since 1999. Applicant learned in 2001 that her husband, who was responsible for paying the family bills, was gambling away their money. Applicant took charge of the finances, advised her husband that if they were to stay married he needed to seek help, worked overtime, and attempted to start paying off the delinquent debts. The debts were too overwhelming and they filed for bankruptcy. Since their debts were discharged in bankruptcy, Applicant is current on their bills. Applicant has successfully mitigated the security concerns regarding Guideline F, financial considerations. Clearance is granted.

STATEMENT OF THE CASE

On January 29, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F, for financial considerations.

In a sworn statement, dated April 28, 2003, Applicant responded to the SOR allegations, and elected to have her case decided on the written record, in lieu of a hearing. In her SOR response, Applicant admitted some allegations and denied other allegations contained in the SOR. Department Counsel submitted the government's case on September 13, 2004. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM, and provided additional material. Department Counsel did not object. The case was assigned to me on April 8, 2005.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and statements, I make the following findings of fact:

Applicant is 46 years old and has been employed in the emergency communications area by a federal contractor since 1999. Applicant served in the Air Force for ten years and held a secret clearance during that time. From 1991 to 1999, Applicant worked for the local sheriff's office in telecommunications. Applicant has been married since 1981, and has two children from the marriage, ages 21 and 19.

In November 1999, Applicant started working for a federal contractor and making more money than she had previously. Applicant's husband was responsible for taking care of the family finances. During this time Applicant's husband started gambling. Applicant was aware that he would occasionally go out on the local gambling ships, but was unaware that he was taking off from work to gamble, and had a problem. Applicant was unaware that her husband was gambling away the family's money. She had her own allowance money for her personal expenses.

In 2001, Applicant was awakened by the Sheriff's department at her home, and told they were being evicted. Applicant moved from the home in April/May 2001. Since that time Applicant took control over all the finances. She set up payment schedules for the family debts and attempted to slowly work on paying off the debts. In October 2001, Applicant was attempting to make payments to all her creditors, but was not always able to do so. She was also attempting to

consolidate her debts. Applicant started working overtime so she could expedite the payment process.

Applicant's family debts exceeded her means to pay off all the delinquent debts in a reasonable time. Applicant and her husband had approximately \$117,000.00 of delinquent debt. Applicant filed for Chapter 7 bankruptcy in approximately November/December 2002. Applicant's debts were discharged in bankruptcy in June 2003.

Applicant accepted responsibility for not being more vigilant in monitoring the family finances. Applicant advised her husband that if they were to stay married he would have to seek help for his gambling problem. Applicant took over the family finances and is keeping track of the family money. Since having their debts discharged in bankruptcy, Applicant is able to pay all of her bills in a timely manner and remains ahead of her payments. She also continues to work overtime to increase her solvency.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline F, pertaining to financial considerations, with its respective DC and MC, apply in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. ⁽²⁾ The government has the burden of proving controverted facts. ⁽³⁾ The burden of proof is something less than a preponderance of evidence. ⁽⁴⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him. ⁽⁵⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. ⁽⁶⁾

No one has a right to a security clearance ⁽⁷⁾ and "the clearly consistent standard indicates that security clearance ⁽⁸⁾

determinations should err, if they must, on the side of denials." Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽⁹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹⁰⁾ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of all the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline F- Financial Considerations-a security concern exists when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the fact in evidence and the legal standards. The government has established a prima facie case for disqualification under Guideline F.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), FC DC E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*), and FC DC E2.A6.1.2.5 (*Financial problems that are linked to gambling, drug abuse, alcoholism, or other issues of security concern*), apply in this case. Applicant accumulated significant delinquent debt due to her husband losing the family's money through gambling. Applicant's debts and her ability to pay them off, exceeded her income.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and specifically considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.3 (*The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) and conclude they all apply.

In 2001, Applicant became fully aware of her husband's gambling problem and the delinquent status of their finances. Once she became aware she took over the finances from her husband and attempted to start paying off their debts. Due to the amount of debt, she filed for bankruptcy and their debts were discharged in June 2002. A period of almost 3 years has lapsed since then. The behavior that caused this problem was not attributed to Applicant, but rather to her husband. However, Applicant took responsibility and made attempts to resolve the problem, which finally resulted in bankruptcy in 2002. To ensure the problem did not happen again Applicant advised her husband if they were going to stay married he needed to get help with his gambling problem. Applicant is now paying their bills on time, and continues to work overtime to ensure she does not have any new financial problems. Applicant has mitigated the security concerns regarding financial considerations.

I have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I am persuaded by the totality of the evidence in this case that it is clearly consistent with the national interest to grant Applicant a security clearance. Applicant has mitigated the security concerns caused by her financial considerations. Accordingly, Guideline F, pertaining to financial considerations are decided for Applicant.

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. Financial Considerations (Guideline F) FOR THE APPLICANT

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. For the Applicant

Subparagraph 1.g. For the Applicant

Subparagraph 1.h. For the Applicant

Subparagraph 1.i. For the Applicant

Subparagraph 1.j. For the Applicant

Subparagraph 1.k. For the Applicant

Subparagraph 1.l. For the Applicant

Subparagraph 1.m. For the Applicant

Subparagraph 1.n. For the Applicant

Subparagraph 1.o. For the Applicant

DECISION

In light of all 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 Applicant. Clearance is granted.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.

4. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

5. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, ¶ E3.1.15.

6. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15

7. *Egan*, 484 U.S. at 531.

8. *Id.*

9. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

10. Executive Order 10865 § 7.