

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant's financial difficulties began in 1993, and continued until 2004. Such financial difficulties stemmed primarily from excessive gambling which began in 1993 and tapered off in 2002. In November 2003, he sought the services of a consumer credit counseling service. He embarked on a path of financial rehabilitation, and has successfully resolved all six debts alleged. Two separate minor administrative actions taken against him in 1993 and 1999 do not constitute a pattern of rule violations. Applicant has successfully mitigated security concerns stemming from his past financial and personal conduct. Clearance is granted.

CASENO: 02-11177.h1

DATE: 02/14/2005

DATE: February 14, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-11177

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial difficulties began in 1993, and continued until 2004. Such financial difficulties stemmed primarily from excessive gambling which began in 1993 and tapered off in 2002. In November 2003, he sought the services of a consumer credit counseling service. He embarked on a path of financial rehabilitation, and has successfully resolved all six debts alleged. Two separate minor administrative actions taken against him in 1993 and 1999 do not constitute a pattern of rule violations. Applicant has successfully mitigated security concerns stemming from his past financial and personal conduct. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On October 3, 2003, DOHA issued a Statement of Reasons (SOR) ^(U) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Applicant answered the SOR in writing on October 30, 2003, and elected to have a hearing before an administrative judge. The case was assigned to me on January 29, 2004. On February 23, 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The government offered 14 documents, which were admitted without objection as Government Exhibits (GE) 1 through 14. The Applicant offered four documents, which were admitted without objection as Applicant Exhibits (AE) A through D. I left the record open after the hearing to afford Applicant the opportunity to submit additional documents. The Applicant timely submitted two additional documents, which were admitted without objection as AE E and F. DOHA received the transcript (Tr.) on March 12, 2004.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to financial considerations under Guideline F and personal conduct under Guideline E (¶¶ 1.a. through 1.i. and 2.a. and 2.b.).

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 37-year-old unmarried man with no dependents. He is a fire and rescue engineer employed by a defense contractor, and is seeking to renew his security clearance. Applicant testified he currently holds a top secret clearance. Tr. 37- 38. GE 1.

Applicant served in the Air Force from November 1985 to November 1993, and was honorably discharged as a Sergeant, pay grade E-4. While in the Air Force, Applicant held a security clearance. He has attended approximately 1 ½ years of college. Tr. 38-39.

In May 1999, Applicant filed for Chapter 13 bankruptcy protection. In February 2000, the United States Bankruptcy Court entered an Order of Dismissal and Denial of Discharge against Applicant (SOR ¶ 1.1.). GE 14. Applicant testified that filing for chapter 13 protection "was not completely what I wanted, . . . , I was under the impression that the bankruptcy, the Chapter 13, was worse than not just trying to make some arrangement to pay the debt without a 13. . . . So I followed bad advice and got it dismissed and then tried to pay it on my own. . . . So it was another misjudgment on my part." Tr. 22. At the time Applicant's Order of Dismissal was entered, he did not follow-up with his creditors to make payments because of "financial hardship" and "a relationship and dealing with that and her family." Tr. 22-23. The fallout from Applicant's failure to follow-up with his creditors gave rise to SOR allegations ¶¶ 1.b. through 1.i.

SOR ¶ 1.b. is a debt to a finance company for \$1,860.00, which was not paid as of June 19, 2003. Applicant entered into an agreement with a credit management company dated February 11, 2004 to begin making payments on the new balance, which was \$2,288.05. Tr. 23-24. GE 9, AE A. Applicant submitted evidence after the hearing reflecting this account was paid-in-full on March 5, 2004. AE E.

SOR ¶ 1.c. is a debt to a phone company for \$478.00, which was not paid as of June 19, 2003. This debt was sold to a credit collection agency. Tr. 24-25. AE B. Applicant submitted evidence after the hearing reflecting this account was paid-in-full on March 25, 2004. GE 6, AE F.

SOR ¶ 1.d. is a debt to a gas company for \$119.00, which was referred to a collection agency. It had not been paid as of June 19, 2003. Applicant paid this debt in full on November 13, 2003. Tr. 25. GE 8.

SOR ¶ 1.e. is a debt to a cable company for \$13.00, which was referred to a collection agency. It had not been paid as of June 29, 2003. Applicant paid this debt in full on December 3, 2003. Tr. 26. AE C.

SOR ¶ 1.f. is a judgment for \$7,270.00 entered against Applicant on June 18, 1997 in favor of a finance company. Applicant's wages were garnished on August 12, 1997, and Notice of Satisfaction was entered on May 24, 1999 by Sheriff's Release. Tr. 26-28. GE 10, GE 11.

SOR ¶ 1.g. is a debt to a credit card company for \$1,747.27, which had not been paid as of May 18, 1999. This debt arose as a result of Applicant misusing his government credit card while he was in the Air Force. Applicant misused his government credit card in 1993 for "rent-a-car services, cash advances, and some food and clothing, for spring break in Florida." (Signed, sworn statement dated May 18, 1999) GE 13, p. 2., Tr. 28-30. Applicant set up payment plans to pay this debt off and anticipates it will be paid "[w]ithin the next couple of months." Tr. 28.

SOR ¶ 1.h. alleges between 1994 and 1998, Applicant spent approximately \$38,000.00 in gambling casinos. Gambling expenditures in approximate amounts are as follows: 1994: \$12,000.00, 1995: \$12,000.00, 1996: \$6,000.00, 1997: \$5,000.00, and 1998: \$3,000.00. Tr. 30. GE 13, p. 3. After 1999, Applicant continued to gamble and his gambling expenditures in approximate amounts are as follows: 1999: \$10,000.00, 2000: \$5,000.00 to \$6,000.00, and 2001: \$5,000.00. In years 2002 and 2003, Applicant testified he "rarely gambled" and estimated his gambling expenditures to be approximately \$1,000.00 to \$1,500.00 a year (SOR ¶ 1.i.). Tr. 30-31.

Applicant's game of choice was blackjack. Tr. 39. Applicant's mother is a blackjack dealer, and taught him how to play blackjack when he was young. Tr. 39-40. His mother has counseled him to stop gambling. Tr. 47.

In May 1999, Applicant was interviewed by the Defense Security Service in May 1999 and attributed his financial problems to a family business venture that failed, drinking too much, spending too much money on gambling, and using credit to finance his gambling. Tr. 31-32. GE 13.

In February 1995, Applicant sought help through his employer's Employee Assistance Program (EAP) regarding his financial problems. He was referred to a financial/credit counseling service. Applicant periodically checked in with his EAP counselor to report on his progress until mid-1995. Tr. 32, GE 11.

On October 1, 1993, Applicant was awarded nonjudicial punishment for misuse of his government credit cards (SOR ¶ 2.1.). See discussion above pertaining to SOR ¶ 1.g. above.

In March 1999, Applicant received a letter of reprimand from his employer for excessive absenteeism (SOR ¶ 2.b.). GE 13. Tr. 33.

Applicant's current debts consist of money owed to three separate credit card companies in the respective amounts of \$400.00, \$500.00, and \$400.00. In November 2003, Applicant contacted a consumer credit counseling service and was advised he "could easily handle paying off the debt" currently showing on his credit report. Tr. 36. Applicant's credit is on the mend and his credit score is trending upward. Tr. 44.

Applicant's gambling is limited to office pools or betting on sports and may play blackjack less than once a month. Tr. 45-46. If he does play blackjack, he limits his losses to \$200.00 per month. He is paying off his debt and living within his means. Tr. 36.

Applicant admits he had a gambling problem, but does not currently have a gambling problem. Tr. 46. After he pays all his bills, he has approximately \$500.00 per month left over. Tr. 34.

Applicant has accepted responsibility for his actions and recognizes his past conduct as "unacceptable behavior." Tr. 52.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure (2) of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

CONCLUSIONS

Upon considering all of the facts in evidence, and after applying all appropriate legal precepts, factors, and conditions, I conclude the following with respect to the allegations set forth in the SOR:

The government has established its case under Guideline F. As indicated above, Applicant's financial situation began to deteriorate in 1999 as a result of gambling and an excessive lifestyle. Applicant's financial situation lead to his filing for bankruptcy protection under chapter 13 in 1999. Applicant's petition for bankruptcy was dismissed before receiving a discharge of debtors. Unfortunately, Applicant did not take the necessary steps to make payment arrangements with his creditors. His gambling, excessive lifestyle, and failure to satisfy outstanding financial obligations gives rise to Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2. (*A history of not meeting financial obligations*); FC DC E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*); and FC DC E2.A6.1.3.. (*Financial problems that are linked to gambling . . .*).

Many of Applicant's post-chapter 13 debts lingered and formed the primary basis for DOHA to issue him an SOR on October 3, 2003. Six debts were alleged in the SOR totaling \$11,487.27.

Upon receiving the SOR and realizing his security clearance and employment were at risk, Applicant embarked on an aggressive course of financial rehabilitation to include seeking the professional assistance of a financial counselor in November 2003, and satisfying completely five of the six debts alleged and is current on his payments for the remaining debt. One of the satisfied five debts was accomplished through judgment and garnishment proceedings and was resolved in 1999 before the SOR was issued. Applicant indicated at his hearing he would provide proof of payment for two of the debts after the hearing and did so.

Although a more timely response in resolving his debts would have desirable, Applicant's comprehensive response to issues raised in the SOR has been impressive. He has paid the full amount of his debts rather than settling for a lesser amount, curbed his gambling on his own volition beginning in 2002, sought out the services of a financial counselor, and is living within his means. His forthright, responsive testimony and demeanor at his hearing are also noteworthy. Financial Mitigating Condition (FC MC) E2.A6.1.3.1. (*The behavior was not recent*) as it pertains to Applicant's excessive gambling, which ceased in 2002; FC C E2.A6.1.3.4. (*The person has received counseling for the problem and there are clear indications that the problem is being resolved or is under control*); and FC MC E2.A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies. Accordingly, allegations 1.a. through 1.i. are concluded for Applicant.

The government has established its case under Guideline E. As indicated above, Applicant's documented financial problems began in 1993 when he was in the Air Force and was awarded nonjudicial punishment for misuse of his government credit card. Six years later in 1999, he was issued a letter of reprimand from his employer for excessive absenteeism. Applicant is still working for the same employer who issued him the letter of reprimand. There is no evidence of further misconduct.

The only potential Personal Conduct Disqualifying Condition is (PC DC) E2.A5.1.2.5. (*A pattern of . . . rule violations . . .*). Given the solitary nature of each allegation, this is not applicable. Furthermore the allegations respectively occurred 12 and 6 years ago and were administrative and minor in nature. There being no personal conduct substantiated, no need to show extenuation or mitigation arises. Accordingly, adverse allegations 2.a. and 2.b. of the SOR are concluded for Applicant.

Although the manner in which Applicant has managed his finances in the past leaves something to be desired, the evidence supports the notion that in 2002, Applicant realized he could not continue gambling as he had in the past. The possible loss of his clearance and job, and the downward direction his life had taken appears to have motivated Applicant to take the necessary corrective action.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a.-1.i: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.-2.b. For Applicant

DECISION

In light of all 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 Applicant. Clearance is granted.

Robert J. Tuidor

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.