

DATE: November 24, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-13025

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Kristin L. Martin, Attorney at Law

SYNOPSIS

Applicant's financial problems were caused in significant part by his gambling. His unwillingness or inability to stop gambling precludes a finding that his financial problems will not recur. Clearance is denied.

STATEMENT OF THE CASE

On January 14, 2003, 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, (as administratively reissued on April 20, 1999), issued a Statement of Reasons (SOR) to 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 applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on February 4, 2003. The case was assigned to the undersigned on June 18, 2003. A Notice of Hearing was issued on July 2, 2003, and the hearing was held on July 23, 2003. The transcript was received on August 8, 2003.

FINDINGS OF FACT

Applicant is 50 years of age. He is employed as a painter and paper hanger by a defense contractor.

Applicant moved from State A to State B in 1995. He moved to State B because its economy was better than State A's economy, which was going through a recession. After moving to State B, applicant became enamored with gambling. Thinking that it was "easy money," he began gambling \$500.00 to \$1,000.00 per week (TR at 19). He ended up losing approximately \$30,000.00 (Exhibit 3). As a result of his gambling losses, and a reduction in his and his wife's income, applicant could not pay his bills. He filed a Chapter 13 bankruptcy petition in February 2000. All of the debts listed in the SOR were included in the bankruptcy petition. A payment plan was set up requiring him to pay approximately

\$16,890.00 to the Bankruptcy Trustee over a five year period. The \$16,890.00 he is required to pay is less than half of the unsecured debt he owed at the time he filed for bankruptcy. To date he has paid the Trustee approximately \$11,170.00. Although he is not delinquent on any payments to the Trustee at the present time, he has missed scheduled payments in the past.

Applicant continued his excessive gambling even after he filed for bankruptcy. Eventually he realized that he was gambling too much and that he "had to try and curb it"(TR at 20). He attended a few meetings of Gamblers Anonymous (GA), which gave him "a look at the world of the addict." He decided that he "was not ready for that lifestyle," and would change on his own (TR at 20). Applicant testified that he began to control his gambling "probably in 2001" (TR at 50). At the present time he gambles "\$10 to \$20 a month, or it might be a \$100 a month" (TR at 20, 50). Applicant does not think he has a gambling problem at the present time.

As noted above, applicant is current on his payments to the Bankruptcy Trustee. In addition, he is current on all of his other debt payments.

Applicant currently has two credit card accounts. He recently went on vacation and used up most of the \$750.00 in total credit the cards offered. The first card has a \$200.00 credit limit. Because the vacation was more expensive than he had expected, applicant is not going to pay off the credit card bill with one payment as he usually does, but rather is going to "pay it off on time" (TR at 33-34,57-59). Although there is no evidence that he is violating the terms of his credit agreement by paying off the debt over time, his inability or reluctance to pay off this relatively small debt with one payment as is his customary practice indicates that applicant is still in an uncertain financial position.

POLICIES

Enclosure 2 of the Directive sets forth Guidelines (divided into Disqualifying Factors and Mitigating Factors) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

Financial Considerations

Disqualifying Factors

E2.A6.1.2.1: A history of not meeting financial obligations.

E2.A6.1.2.3: Inability or unwillingness to satisfy debts.

E2.A6.1.2.5: Financial problems linked to gambling.

Mitigating Factors

E2.A6.1.3.6: The individual initiated a good-faith effort to repay

overdue creditors or otherwise resolve debts.

CONCLUSIONS

Between 1996 and 2001, applicant gambled to excess, sustaining approximately \$30,000.00 in losses. Primarily as a result of his gambling losses, he was unable to pay his bills, and in February 2000, he filed a Chapter 13 bankruptcy petition. The court approved a plan which, in essence, relieved applicant of over one-half of his unsecured debt. Applicant has for the most part made timely payments to the Bankruptcy Trustee, and if he continues to do so, he will complete the plan in early 2005. Once he completes the plan, he will no longer be legally responsible for his past-due financial obligations, including those listed in the SOR.

Applicant's compliance with the bankruptcy plan and his responsible handling of his more recent financial obligations are strong factors in his favor. Had he stopped gambling, these factors would have gone a long way toward overcoming

the Government's case. However, the evidence establishes that he is still gambling, as much as \$100.00 per month. When viewed in isolation, this conduct is not necessarily irresponsible. However, given applicant's history; namely, approximately five years of excessive gambling resulting in \$30,000.00 in losses and an inability to meet his financial obligations, this conduct is highly irresponsible. More importantly, his unwillingness or inability to stop the very behavior that significantly contributed to his financial troubles precludes a finding that his financial difficulties are unlikely to recur. For these reasons, Guideline F is found against applicant.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST THE APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for applicant.

Joseph Testan

Administrative Judge