

DATE: April 7, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23668

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Kathryn MacKinnon, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated security concerns over the financial problems created by his wife's compulsive gambling in 1996-99 and over allegations of personal conduct, and criminal conduct.. When he completed his security forms in 1999, he had no knowledge of their financial difficulties: his wife handled their finances and initially hid these debts. As he had no intent to falsify on his security form, no personal conduct and criminal conduct security concerns were demonstrated. To deal with her gambling debts, his wife sought financial and other counseling. They resolved debts to many creditors not alleged in the SOR. While they only paid Creditor #1, the other creditors wrote off their debts several years ago, and they have not incurred any new debts. Applicant is now more involved in the family finances and is highly regarded at work. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on July 11, 2003. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.⁽¹⁾ The SOR alleges specific concerns in paragraph 1 over financial issues (Guideline F), in paragraph 2 over personal conduct (Guideline E), and in paragraph 3 over criminal conduct (Guideline J). Applicant responded to these SOR allegations in an Answer notarized on July 17, 2003. He denied all allegations and requested a hearing.

The case was assigned to Department Counsel who on October 30, 2003, stated it was ready to proceed. On November 6, 2003, the case was assigned to me. A mutually convenient date for hearing was agreed to and a Notice of Hearing issued on December 1, 2003, set the matter for December 22, 2003. The Government offered four exhibits which were admitted into evidence (Exhibits 1-4). Applicant testified, called one witness, and offered nine exhibits (Exhibits A through I) which were admitted into evidence. (TR 17-20) The transcript (TR) was received on January 6, 2004.

FINDINGS OF FACT

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

Applicant is a 52 year old employee of a defense contractor (Employer #1 in State #1) where he has worked since June 1999. Previously he worked for Employer #2 from 1988 to 1999. In December 1999 he completed a Security Clearance Application (Standard Form 86) and requested a clearance. He was granted a secret clearance in June 1988 and again in October 1999. (Exhibit 1) He has never had a security violation or security incident. (TR 32-33; 60-61; Exhibit H)

Applicant received a B.S. degree in December 1987 from a state university. His first marriage lasted from 1971 to 1976, his second from 1977 to 1979, and his third from 1979 to 1981. He married his current wife in April 1983. She is fifty years old. He has one child born in 1990. (Exhibit 1)

Financial Considerations, Personal Conduct and Criminal Conduct

Applicant disclosed no financial issues on his 1999 Standard Form 86 (SF 86). (Exhibit 1) Although he asked his wife about their financial status, she failed to disclose any of her gambling debts to him. (TR 38-39) Since he was working ten to twelve hours a day, he relied on his wife to manage their family finances. He had no intent to falsify his security form. (TR 60-61)

In December 2000 Applicant was interviewed by the Defense Security Service (DSS) and confronted with adverse issues developed during the investigation. He explained his wife⁽²⁾ "had a compulsive gambling disorder which resulted in the loss of some family money and in the ability for us to pay certain creditors in a timely fashion." He relied on his wife who always handled all family finances and misled him that she was making arrangements with creditors for repayments. He took "her word for that." (Exhibits 3, 4, 5; TR 65-66) On his 2000 Personal Financial Statement he reported monthly net income of almost \$5,000 and monthly expenses of only \$1,320 plus \$2,6000 monthly to repay debts, including the mortgage and \$1,000 each month to repay a family loan she had taken to resolve her gambling debts. They had a \$854 monthly remainder. (Exhibit 3)

Applicant's wife testified that she started going to a new casino near her home as entertainment in 1996. She started going more and losing, so she then bet with larger denominations and began to spiral downward. She took cash advances from their credit cards in 1998 and kept these debts from her husband as she had always handled the finances. She even secretly borrowed money from a family member in 1998 to resolve the debts. In 1999 she borrowed more from the family member and started to pay off some creditors. Others like Creditor #5 offered settlements, and three creditors (Creditors #2, #3, and #4) wrote the amount off the balance as a bad debt. After she borrowed money from relatives, she got laid off from her job which reduced their income. When he completed his security form in 1999, he asked her about any debts and she failed⁽³⁾ to reveal any of their financial problems. She did not tell him she borrowed money from his sister's husband. While she went to a Gamblers Anonymous (GA) meetings in November 1999, she decided she was not like "these people." So she borrowed money again and began to gamble again. She then returned to GA in February 2000, but she did not disclose her attendance to her husband. Later in 2000 she had herself banned from the casino to prevent herself from going back. She borrowed a total of \$50,000 from a family member, but is repaying him at the rate of \$1,000 per month; they have repaid him consistently and now owe approximately \$36,000. (Exhibit I; TR 24-26; TR 37-43; TR 53-55)

Applicant's wife shredded the bills from creditors, so has no records from that period. (TR 28) She went to Consumer Credit Counseling (CCC) in 1998 to pay off other debts, but did not include Creditors #2, #3, or #4 as they had charged off the debts. (TR 48; 55-57) She no longer attends GA meetings but has not gambled since 2000. (TR 51; 58-59) In 2002 she took a job as a cashier in the same casino where she had previously had herself banned; she no longer works there. (TR 58-59)

In answer to DOHA Interrogatories in April 2003 Applicant reported the status of his debts to five creditors:

He stated that the \$827 debt to Creditor #1 was accrued when he closed a checking account with another bank, acquired by Creditor #1. Applicant stated he planned to pay the amount to Creditor #1. Applicant paid the debt in December 2003 by money order. (SOR 1.a.) (Exhibits 2, 4) (TR 27-28; 44-45; Exhibit C)

He stated that the \$5,793 debt to Creditor #2 was charged off in May 2000 had no plan to pay the amount to Creditor #2. (SOR 1.b.) (Exhibits 2, 4) After he received the SOR, Applicant's wife wrote letters to the creditor in August 2003 and again in November 2003, but received no response. (TR 28, 31; 43-44, 46; 71; Exhibit D)

He stated that the \$3,162 debt to Creditor #3 was charged off in February 2000. Applicant provided no plan to pay the amount to Creditor #3. (SOR 1.c.) (Exhibits 2, 4) After he received the SOR, Applicant's wife wrote letters to the creditor in August 2003 and again in November 2003, but received no response. (TR28, 31; 43-46; 71; Exhibit E)

He stated that the \$6,197 debt to Creditor #4 was charged off in 1999. Applicant stated he had no plan to pay the amount to Creditor #4. (SOR 1.d.) (Exhibits 2, 4) After he received the SOR, Applicant's wife wrote letters to the creditor in August 2003 and again in November 2003, but received no response. (TR 28, 31; 43-46; 71; Exhibit F)

He stated that the \$1,355 debt to Creditor #5 was not charged off, but cancelled. Creditor #5 required Applicant to claim it as income in their 1998 taxes. (SOR 1.e.) (Exhibits 2, 4) Applicant's wife wrote to Creditor #5 to have the amount removed from their credit report, but got no response. (TR 28; Exhibit B)

Applicant earns \$83,000 annually. (TR 55) Their December 2003 budget reports monthly net income of almost \$5,000 and monthly expenses of \$3,817, including the mortgage payment and a \$1,000 monthly debt repayment of a loan to a family member. They have approximately a \$800 monthly remainder. Applicant's wife is not currently working. Since the credit card debts were charged off by these creditors several years ago, she has had no intent to repay unless she hears back from these three outstanding creditors that they consider them current obligations. (TR 30-31; 34-36; Exhibit A) Applicant and his spouse have no new credit cards or new auto loans. They drive 1989 and 1990 cars. (TR 36-37; 52) They have \$10,000 in savings. (TR 48-50; 68-69)

Applicant is now more involved in the family finances. (TR 50-51) He confirmed that they did not make any attempt to resolve the debts to Creditors #2, #3, or #4 as they were written off as bad debts and these creditors made no further attempt to collect. If they had confirmation from the creditors that these were existing debts, they would withdraw money from their savings to settle the debts. (TR 67-69)

References

Applicant's functional supervisor who has known him for four years wrote a letter declaring that Applicant has "excellent judgment and discretion." He concluded Applicant demonstrates high personal ethics and is worthy of complete trust. (TR 62-63; Exhibit G)

The program manager for a multi-million dollar system has known Applicant for three years concluded Applicant's "integrity, honesty and dedication have been outstanding." His trustworthiness is beyond reproach. This manager highly recommended Applicant for a position of trust. (TR 62-63; Exhibit G)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive.

Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

Guideline F - Financial Considerations

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

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;

Conditions that could mitigate security concerns include:

1. The behavior was not recent;

2. It was an isolated incident;

4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Guideline E - Personal Conduct

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

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

None

Conditions that could mitigate security concerns include:

None

Guideline J - Criminal Conduct

A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

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

None

Conditions that could mitigate security concerns include:

None

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Financial Considerations

Applicant trusted his wife to handle the family finances and relied on her assurances that they were solvent.

Unbeknownst to him, she began to gamble in 1996 and spiraled down in 1998 by using their credit cards for cash advances. As a consequence, the family developed (1) a history of financial problems and showed (3) an inability or unwillingness to satisfy debts as debts to several creditors were charged off and remained on their credit report. (SOR 1.a-1.e.) Busy with his job, Applicant for several years failed to focus on his family financial responsibilities and entrusted his wife with total responsibility.

However, once the problems surfaced in 1998, Applicant's wife went to GA, eventually had herself banned from the casino, and engaged in several strategies to resolve their family finances, including going to CCC to resolve debts that were not included in the SOR and borrowing money from a family member that they have been consistently repaying at the rate of \$1,000 per month. She did not resolve three of the remaining debts addressed in the SOR as those creditors had charged off the loans, and she did not feel an obligation to repay. They did repay a debt to Creditor #1; Creditor #5 wrote off the debt but insisted they report it as income in their 1998 return. Their financial difficulties meet several mitigating conditions (MC⁽⁴⁾). First, the problems are not recent as Applicant's wife's gambling problems in 1996-99 alone created their financial difficulties, and she subsequently took several remedial steps. She had herself banned from the casino in 2000 and has not returned to gambling. Second, the financial problems are isolated to that period and were generated solely by her gambling problem. To her credit under MC4, she tried several approaches to address their financial issues including seeking counseling for the problem; now there are clear indications that the problem is being resolved or is under control. Applicant's wife paid off several creditors (not alleged in the SOR) under a CCC plan and paid off others with money borrowed from a family member. They are demonstrating a consistent good-faith effort to repay the family member at the rate of \$1,000 per month. They paid the debt to Creditor #1 and resolved the debt to Creditor #5 in 1998. Further, each stated they were willing to satisfy the unresolved debts to Creditors #2, #3, and #4, with \$10,000 in savings if these creditors respond to their recent written inquiries to clarify the status of these debts.

Further they provided updated budget information to show they now live within their means and have acquired no new debts. Applicant has a stable job and income; he is highly regarded by his supervisor and the program manager. Thus, they sufficiently demonstrate they are now financially responsible and currently are meeting their obligations. Also, Applicant now takes more responsibility for oversight of the family finances. After considering Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on all subparagraphs under SOR Paragraph 1.

Personal Conduct

While Applicant had a duty in completing his SF 86 to disclose all adverse information in response to the questions asked, he had no intent to falsify. He mistakenly relied on his wife's assurances in 1999 that they had no financial problems. In the DSS interview in 2000 he was cooperative in explaining the financial issues discovered during the investigation. He readily disclosed to the DSS agent the source of their financial problems: he had subsequently learned of his wife's compulsive gambling. After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 2.a. under SOR Paragraph 2.

Criminal Conduct

While Applicant had a duty to fully disclose all relevant and material information and failed to do so, as discussed above, he had no intent to falsify. After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 3.a. under SOR Paragraph 3.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Paragraph 2. Guideline E FOR APPLICANT

Subparagraph 2.a.: For Applicant

Paragraph 3. Guideline J FOR APPLICANT

Subparagraph 3.a.: For 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 the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. Although he disclosed these issues in a December 2000 DSS interview, his wife testified she did not tell her husband everything until early 2001. He did not remember when she first told him as he was "floored." (TR 41, 43; 64-65; 69-70)
3. Even though she has handled security clearances for a defense contractor in the past, she lied to her husband. (TR 29) However, her security clearance is no longer an issue as she no longer works for that firm.
4. **Conditions that could mitigate security concerns include:** 1. The behavior was not recent; 2. It was an isolated incident; 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); 4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control; 5. The affluence resulted from a legal source; and 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.