

KEYWORD: Personal Conduct

DIGEST: Applicant has a history of gambling abuse manifested in accumulated debts exceeding \$45,000.00 during an eight-year period in the 1990s, most of which he concealed from his wife at the time. Acknowledging to himself that he had a gambling problem in 1999, he voluntarily enrolled in gamblers anonymous (GA) and tapped his 401k retirement fund for the necessary fund to repay his gambling and other debts. While Applicant has continued to gamble in local casinos, he has done so only occasionally, and never to abusive levels over the past five years. Combined with strong character references from persons who know him well at work, in his church, and in his community, Applicant successfully mitigates Government security concerns associated with his past gambling abuses. Clearance is granted.

CASENO: 02-25016.h1

DATE: 01/31/2005

DATE: January 31, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-25016

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of gambling abuse manifested in accumulated debts exceeding \$45,000.00 during an eight-year period in the 1990s, most of which he concealed from his wife at the time. Acknowledging to himself that he had a gambling problem in 1999, he voluntarily enrolled in gamblers anonymous (GA) and tapped his 401k retirement fund for the necessary fund to repay his gambling and other debts. While Applicant has continued to gamble in local casinos, he has done so only occasionally, and never to abusive levels over the past five years. Combined with strong character references from persons who know him well at work, in his church, and in his community, Applicant successfully mitigates Government security concerns associated with his past gambling abuses. Clearance is granted.

STATEMENT OF CASE

On January 15, 2004, 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 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 granted, continued, denied or revoked.

Applicant responded to the SOR on January 30, 2004 and requested a hearing. The case was assigned to me on July 15, 2004, and was scheduled for hearing on August 11, 2004. A hearing was convened on August 11, 2004, for the purpose of considering whether it is clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of eight exhibits; Applicant relied on two witnesses (including himself) and 10 exhibits. The transcript (R.T.) of the proceedings was received on August 20, 2004.

SUMMARY OF PLEADINGS.

Under Guideline E, Applicant is alleged to have (a) accumulated approximately \$45,000.00 in gambling debts due to a gambling addiction, which he covered with funds withdrawn from his employer's performance sharing plan, (b) failed to make his wife aware of his previous gambling debts, (c) attended three gamblers anonymous (GA) meetings through his employer's employee assistance program for a gambling addiction in approximately 2002, and (d) continues to gamble

one to two times monthly, as of May 2003, spending approximately \$100.00 each time.

For his response to the SOR, Applicant admitted each of the allegations except for his failing to make his wife aware of his previous gambling debts. He claimed his gambling losses were subsequently paid off with a hardship withdrawal from his 401k retirement plan that he used to repay other debts besides his gambling debts. He claims his wife knows he gambled and lost money, just not the extent of his losses. He claimed to have taken up casino gambling in the early 1990s as a recreational outlet with his wife and elderly mother (since deceased). And he claimed he now gambles occasionally, but on a much smaller scale that does not affect him financially.

FINDINGS OF FACT

Applicant is a 62-year-old senior engineer for a defense contractor who seeks to retain his security clearance that he has held for 40 years (R.T., at 55). The allegations covered in the SOR, and admitted to by Applicant, are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant participated regularly in casino gambling with his wife of 18 years and his elderly mother (since deceased) over an eight-year span in the 1990s. By ay 1999 he had accumulated approximately \$45,000.00 in gambling debts. This information was furnished Applicant's facility security officer (FSO) in May 1999 and is contained in an adverse information report on file with his employer (*see ex. 3*). Applicant financed his gambling activity with his personal credit cards, none of which were ever delinquent (R.T., at 58). While he didn't tell his wife initially about the extent of his gambling losses (around \$45,000.00 in all), he acknowledged her suspicions (*see exs. 6 and 8*). Because Applicant has always paid most of the bills, his wife, an elementary school teacher who owns the house they live in (and pays only the house-related bills like the home mortgage, taxes, insurance and other personal debts) never knew the extent of credit card debt he ran up to support his gambling activities.

In August 2002, Applicant obtained a hardship withdrawal from his 401k performance plan. With the net \$96,000.00 in withdrawal funds he received (*see ex. 8*), he paid off his personal loans, remaining gambling debts, and had enough left over to make down payments on two cars (*see ex. A; R.T., at 62, 75-76*). At this time, he also told his wife everything about his gambling debts and payoffs (R.T., at 66-67). He attributes the timing of his disclosures to his conscience, which had begun to bother him.

Believing at the time of his reconciliation of his accumulated gambling debts that he had a serious gambling addiction, Applicant attended several meetings with GA before concluding that he could better address his gambling problem himself (R.T., at 56-57). He has never received professional psychological counseling for his past gambling abuses and doesn't believe that he has a gambling addiction at this time. Applicant restricts his gambling to casual betting and

assures he has no intention of ever again engaging in abusive gambling (R.T., at 64-65). He maintains excellent credit and has not incurred any known debt delinquencies (*see* exs. B through G; R.T., at 51-53).

Applicant is considered to be honest and reliable by his supervisor, coworkers and friends who know and work with him (*see* exs. H and I; R.T., at 86-90). His longstanding colleague and direct supervisor of two years describes Applicant as a person committed to the highest ideals of moral character, personal integrity, strong ethics, and high responsibility (ex. H). Applicant has been an active member in his local college alumni association and is credited by a fellow alumnus and local chancery clerk with devoted efforts to his university and community and with being a man of integrity, a helpful friend, and a person he is proud to call a friend (*see* exs. H and I). He has received group managers' awards in 1998 and 1999 recognizing his exceptional team efforts contributing to the successful completion of the company programs he was assigned (*see* ex. J).

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Personal Conduct

The Concern: 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.

Disqualifying Conditions:

DC 1 Reliable unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances.

DC 4 Personal conduct that increases an individual's vulnerability to coercion, exploitation or duress.

Mitigating conditions:

MC 5 The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSION

Applicant accrued considerable legal gambling debts in the 1990s before taking a hardship withdrawal from his 401k performance plan in 2002 to pay off the debts. Altogether, Applicant had incurred some \$45,000.00 in legal gambling debts by May 1999 before realizing he had become addicted to gambling that he needed to address.

Because Applicant's gambling debts did not create any undue financial burdens for him, security concerns over an applicant's financial condition are not present in this case. What is of security significance is Applicant's self-described addiction to gambling in the past and the risk of recurrence of his addiction in light of the many years of active gambling. To be sure, two of the disqualifying conditions (DC) of the Adjudicative Guidelines for personal conduct are applicable here: DC 1 (reliable unfavorable information) and DC 4 (personal conduct that increases the individual's vulnerability to coercion, exploitation or duress). Far more pertinent for assessing security concerns over Applicant's gambling problems of the past, though, are the E 2.2 factors enumerated in the Adjudicative Guidelines of the Directive. That Applicant gambled to self-described abusive levels in the past and still gambles (although less frequently) preserves the need to consider the risk of recurrent addictive gambling behavior in the future. Such recurrence risks create the potential for pressure or compromise, even for an applicant who has held a security clearance as long as he has.

Still, Applicant has never been diagnosed for gambling addiction and has no clinical diagnosis for any kind of gambling disorder. Since he began participating in GA in 1999, he has limited his gambling activities to occasional trips to the local casinos and has totally repaid his accumulated gambling debts with a large withdrawal from his 401k retirement plan. Moreover, he has since fully disclosed the extent of his gambling debts to his wife, thereby eliminating any potential vulnerability to coercion or compromise from this source. Important to balancing the risks of vulnerability associated with his gambling abuses is the strength of his reputation for strong moral character with his company managers and coworkers, within his church, and in his community where he is known for his strong alumni and civic support.

Applicant mitigates active security concerns associated with his gambling abuses by his acceptance of his problem, repayment of his accumulated gambling debts, informing of his wife, and his overall demonstration of good judgment, reliability and trustworthiness, both within and outside of his work place. Appraising Applicant's mitigation with respect to the judgment lapses associated with his past gambling abuses, Applicant may take advantage of MC 5 (individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion or compromise) of the Guidelines to mitigate his past gambling abuses. He may also avail himself of the mitigation benefits covered by the E.2.2 factors for appraising an applicant's overall conduct and actions taken to reduce or eliminate risks of recurrence.

Taking into account all of the circumstances of Applicant's history of gambling abuse and corrective steps he has taken to reduce or eliminate any recurrence risks, favorable conclusions warrant with respect to subparagraphs 1.a through 1.d as to the allegations governed by the Adjudicative Guidelines pertinent to Guideline E.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

Sub-para. 1.d: 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 Applicant's security clearance. Clearance is granted.

Roger C. Wesley

Administrative Judge

