

DATE: December 20, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-32298

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's gambling addiction caused him to incur debts which he could not pay. Applicant failed to establish that he has his gambling addiction under control. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 22 June 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 9 September 2004 and elected to have the case decided on the record in lieu of a hearing. Department Counsel submitted the case on 30 September 2004 and mailed the file of relevant materials (FORM) to Applicant. Applicant was given the opportunity to rebut, explain, or mitigate the matters contained in the FORM. Applicant acknowledged receipt of the FORM on 8 October 2004, but failed to respond. The case was assigned to me on 17 November 2004.

FINDINGS OF FACT

Applicant is a 59-year-old maintenance coordinator for a defense contractor. In July 1999, Applicant voluntarily sought counseling concerning his gambling problems. Applicant met with a psychologist for outpatient psychotherapy for a total of 14 sessions between July and November 1999. His original diagnosis was pathological gambling and adjustment disorder with depressed mood. During his treatment, Applicant became increasingly depressed over his gambling problem and was at risk for self-destructive behavior. He was referred to a day-patient program in which he was treated for five days by a psychiatrist. The treatment included the use of anti-depressant medication. After his release from the day-patient program, Applicant was admitted to an intensive outpatient program for six weeks. After completion of that program, Applicant continued with his outpatient therapy with the psychologist.

The psychologist recommended Applicant seek the assistance of Gambler's Anonymous for his ongoing recovery

program. She recommended sponsor contact and relapse prevention techniques. Although compliant at times, Applicant was, at other times, resistant to these suggestions. He appeared in denial despite "having suffered serious consequences from his gambling problem." Applicant terminated his treatment in November 1999 and has not had any counseling concerning his gambling problem since. Prognosis for a patient with a gambling addiction is fair to good with an ongoing recovery program.

Applicant admits having "fallen off [his] recovery several times." On one of these occasions in 2002, he wrote a check to a casino that was returned for insufficient funds. Otherwise, his financial condition now appears stable.

In November 1999, Applicant filed for Chapter 13 bankruptcy protection because of debts incurred as a result of his gambling. In January 2000, he had the Chapter 13 action converted to a Chapter 7 bankruptcy. His debts were discharged later that year.

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 restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. 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.

CONCLUSIONS

In the SOR, DOHA alleged Applicant was treated for an adjustment disorder with depressed mood and pathological gambling (¶ 1.a), filed for Chapter 13 bankruptcy in November 1999 that was converted to Chapter 7 bankruptcy in 2000 (¶ 1.b), identified the cause of his financial problems as gambling (¶ 1.c), relapsed into gambling once between July and November 2002 (¶ 1.d), and had a check he wrote to a casino returned for insufficient funds (¶ 1.e). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established by substantial evidence each of the allegations in the SOR. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and was unable or unwilling to satisfy his debts (DC E2.A6.1.2.3.).

Applicant admits that his past financial problems were the result of his gambling. DC E2.A6.1.2.5. On the other hand, Applicant made a good-faith effort to resolve his debts through bankruptcy. MC E2.A6.1.3.6. Applicant's financial situation appears to be stable. Since the bankruptcy, his only financial problem has been the bad check he wrote to the casino.

The main concern in this case is Applicant's gambling addiction and its possible impact on national security. Applicant asserts that his past history demonstrates that he is not at risk for divulging classified information to get money--he has held several jobs which required him to manage large contracts and there is no evidence he misused money from those contracts. But a decision to grant a security clearance is a predictive judgment based on all of the evidence available to the administrative judge. Applicant has a gambling addiction. This addiction caused him to have serious financial problems such that he found it necessary to file for bankruptcy. His prognosis is fair to good if he continues in a recovery program. Applicant provided no evidence that he is in such a program. And he has gambled on several occasions since leaving treatment. On one occasion, he wrote a check without having sufficient funds in his account to cover it. After considering all of the circumstances, I conclude Applicant has not established that he has his gambling under control such that it will not cause him additional financial problems in the future that could jeopardize national security.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

DECISION

In light of all of 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. Clearance is denied.

James A. Young

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 (Directive).