

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has mitigated the security concern caused by her gambling habit and the financial issues it created. Clearance is granted.

CASENO: 03-01184.h1

DATE: 02/21//2006

DATE: February 21, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-01184

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has mitigated the security concern caused by her gambling habit and the financial issues it created. Clearance is granted.

STATEMENT OF THE CASE

On June 15, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant submitted a sworn answer to the SOR, dated July 28, 2004, admitted the allegations contained in SOR subparagraphs 1.a, 1.b, and 1.d, denied the allegations contained in subparagraphs 1.c and 2.a, and requested a hearing.

This case was assigned to me on September 6, 2005. A notice of hearing was issued on September 15, 2005, scheduling the hearing for November 2, 2005. The hearing was conducted as scheduled. The government submitted six documentary exhibits that were marked as Government Exhibits (GE) 1-6, and admitted into the record without objection. Applicant testified and submitted eleven documentary exhibits that were marked as Applicant's Exhibits (AE) 1-11, and admitted into the record without objection. The transcript was received on November 17, 2005.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the

pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 66 years old and has been employed by a defense contractor since July 2000, presently as a dispatcher. She was initially hired as a security officer, and had previously worked in that field for other employers since at least 1992. She possessed a secret security clearance from 1983 until 1991. No complaints were made during that time alleging she mishandled or risked the compromise of classified information, and no previous action was ever taken to revoke her security clearance.

Applicant was married in March 1961, and that marriage ended in divorce in June 1971. She remarried in February 1972, that marriage ended in divorce in August 1978, and she has been single since that time. Applicant has three adult children ranging in age from 32 to 44.

In approximately 1993, Applicant let her son use her store credit card for the sole purpose of buying a car seat for his infant child. The son abused the card and made substantial purchases with the card that were not authorized by Applicant. She attempted to dispute the charges with the store, and made payments on the bill for a period of time until she decided she could no longer afford to make any payments. The account was listed as 30 days delinquent as of April 1997 (GE 4), and no further payment has ever been made. The account was written off with a balance of \$4,412.00 past due as of October 2003 (GE 4). The account no longer appears on Applicant's credit report (GE 6), most likely because of the passage of time.

Applicant was laid off from a job that had been paying her \$13.86 per hour in September 1991. She could thereafter only find employment that paid her \$5.25 per hour. She was unsuccessful in her efforts to stay current on her bills with the greatly reduced salary, and was forced to file for Chapter 7 bankruptcy protection in June 1995. She listed unsecured claims totaling \$16,149.00 and secured claims totaling \$31,350.00 in her bankruptcy petition. She obtained a Chapter 7 bankruptcy discharge on October 25, 1995.

Applicant received approximately \$60,000.00 from her retirement account when she was laid off that was rolled-over into an individual retirement account (IRA). She thereafter withdrew money from the IRA to supplement her reduced income and to spend gambling at casinos without having taxes withheld. As a result, the Internal Revenue Service (IRS) filed a tax lien against her on March 22, 1996, in the amount of \$5,700.00. She established a repayment plan with the IRS, and the lien was satisfied as of August 2001 (GE 6).

Applicant has been playing slot machines at gambling casinos since she was 16 years old. Although she denies having a gambling problem, her family physician referred her to a counselor to discuss her gambling habit in about 1990, and she attended gamblers' anonymous meetings for a short period of time in about 1994 at the urging of her sister. She does not remember how it came about that her doctor referred her to a counselor. She believes her sister's religious beliefs are what caused her sister to recommend she attend gamblers' anonymous meetings.

Applicant lost approximately \$20,000.00 of the money from her IRA in casinos during the 12 months preceding the filing of her bankruptcy petition (GE 5). In 1999, and again in 2000, Applicant sought advances against her salary from her employer because by playing slot machines she had lost the money she needed to pay bills.

Applicant testified she only gambles at casinos a couple of times a year. However, in a statement she provided to a special agent from the Defense Security Service (DSS) in October 2002, she stated: "I currently gamble about \$200.00 a month, if I have it" (GE 2). She testified the last time she went to a casino was a couple of months before the hearing and that she: ". . . spent about \$500.00 and brought \$3,200.00 home? [sic]" (Tr. p. 59). She visited a casino sometime between February and May 2005, and lost \$300.00 (Tr. p. 59). The most she has lost at a casino in the last five years at one time is a thousand dollars (Tr. p. 59). The most she has won at one time in the last five years is nine thousand dollars (Tr. p. 59).

Applicant's net pay every two weeks is approximately \$700.00.⁽²⁾ She also receives \$1,228.00 per month from social security, and \$110.00 per month from a pension (AE 1). She had \$2,193.30 in a checking account as of October 31, 2005, and \$1,295.94 split between two savings accounts as of November 1, 2005 (AE 3). She also had \$478.02 on deposit in a credit union account as of October 31, 2005 (AE 5). Applicant submitted verification she has been paying her rent, utilities, and car payment on time (AE 10).

Applicant's credit report, dated October 29, 2005 (AE 11), disclosed only the following accounts: 1) a revolving credit card with a high balance of \$218.00 that was incurred in May and June 2005, paid in full as of July 2005, with the status listed as: *Open/Never late*; 2) a revolving credit card closed as on August 1999, with the status listed as: *Paid, Closed/Never late*; 3) a revolving credit card with a high balance of \$514.00 that was paid in full as of June 2005, with the status listed as: *Open/Never late*; and 4) an installment loan opened in July 2003 in the original amount of \$11,055.00, with monthly payments in the amount of \$215.00, a remaining balance as of September 2005 in the amount of \$6,627.00, and the status listed as: *Open/Never late*.

Applicant listed her bankruptcy and a 1978 felony arrest in a security clearance application (SF 86) she submitted in February 2001. However, she did not list the tax lien that was filed against her in March 1996. Applicant credibly testified that while she knew she had owed back taxes and had paid them, she didn't know that was considered a lien.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline F, pertaining to financial considerations and Guideline E, pertaining to personal conduct, with their respective DC and MC, are most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽³⁾ The government has the burden of proving controverted facts.⁽⁴⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁵⁾, although the government is required to present substantial evidence to meet its burden of proof.⁽⁶⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁷⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁸⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

No one has a right to a security clearance⁽¹⁰⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹²⁾

CONCLUSIONS

Under Guideline F, a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Disqualifying Conditions (DC) that potentially could raise a security concern and may be disqualifying in this case are DC 1: *A history of not meeting financial obligations*; DC 3: *Inability or unwillingness to satisfy debt*; and DC 5: *Financial problems that are linked to gambling*

Applicant was laid off and forced to work for substantially less pay in September 1991. She eventually found it necessary to file for Chapter 7 bankruptcy protection in June 1995, and received a discharge in bankruptcy in October 1995. She allowed her son to use her credit card in about 1993, and as a result she incurred a debt in the amount of \$4,412.00 which was charged off in October 1997. DC 1 and DC 3 both apply.

Applicant has not incurred any financial delinquencies since she obtained the bankruptcy discharge. The one delinquent account her son incurred on her behalf was charged off more than eight years ago. Applicant unsuccessfully attempted to dispute this account with the creditor. The creditor thereafter charged off the account in 1997, and has not taken any subsequent action to collect on the account. Applicant's current credit report and the other exhibits she offered reveal she is living a financially responsible lifestyle that is well within her income level, and that she has remained current on all her debts for a number of years. Mitigating Conditions (MC) 1: *The behavior was not recent*; MC 3: *The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment . . .)*; and MC 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* apply.

It is unlikely the SOR in this case would have been issued if it were not for the concern caused by Applicant's long history of gambling. Her physician referred her to a counselor about 15 years ago to discuss her gambling habit. Her sister recommended she attend gambler's anonymous meetings about 10 year ago. However, gambling in casinos is not illegal and in itself does not disqualify a person from holding a security clearance. The concern, at least as alleged under Guideline F, is financial problems that are incurred as a result of gambling.

On two occasions, once in 1999 and again in 2000, Applicant was forced to seek an advance in pay from her employer because she had gambled away money she needed to pay bills. However, there has been no recurrence of such irresponsible behavior since 2000. Instead, as Applicant wrote in the statement she provided to the DSS special agent she gambles "about \$200 a month, if I have it" (GE 2). She testified she visits casinos and gambles several times a year, and the most she has lost in the past five years at one time is a thousand dollars.

The itemization of Applicant's monthly expenses and income (AE 1) indicates she lives well within her income and likely has significant discretionary income each month. Her credit history clearly indicates that whatever money she may lose in slot machines has no affect on her ability to stay current with her living expenses. Under the facts present in this case, Applicant's lifelong enjoyment in visiting casinos and playing slot machines does not create a security concern. DC 5 does not apply.

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. 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.

Applicant's explanation for not disclosing her 1996 tax lien in the 2001 SF 86 she submitted is credible. In making that determination, I have carefully considered her appearance and demeanor while testifying, the substance of her testimony, the adverse information she did disclose in the SF 86, and her obvious lack of sophistication in such matters. She did not deliberately provide false information or fail to disclose accurate information when she submitted the SF 86. No disqualifying condition applies under Guideline E.

Considering all relevant and material facts and circumstances present in this case, including the testimony and evidence provided by Applicant, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has mitigated the security concerns in this case. She has overcome the case against her and satisfied her ultimate burden of persuasion. Guideline F and Guideline E are decided for Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline F: For Applicant

Subparagraphs a-d For Applicant

SOR ¶ 2-Guideline E: For Applicant

Subparagraph 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 Applicant. Clearance is granted.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Applicant submitted a wage statement (AE 6) that lists her net pay as \$662.02. However, it was for only 36 hours regular pay and 40 hours vacation pay, all at the rate of \$11.70 per hour.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
5. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
6. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
7. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
8. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
10. *Egan*, 484 U.S. at 528, 531.
11. *Id* at 531.
12. *Egan*, Executive Order 10865, and the Directive.