

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: Overall Applicant failed to mitigate security concerns over financial concerns, personal conduct and criminal conduct. He continues to gamble despite a large gambling loss that led him to file for bankruptcy in 2001 and a promise to his wife that he would stop gambling and seek counseling. He never sought counseling. Also, he failed to list a gambling-related arrest in 2000 on his security clearance application While it is commendable that he has completed his Chapter 13 bankruptcy plan and resolved two judgments, his failure to address the gambling pattern raises the possibility that financial concerns could recur. Clearance is denied.

CASENO: 03-13796.h1

DATE: 02/23/2006

DATE: February 23, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-13796

**DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Nichole Noel, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Overall Applicant failed to mitigate security concerns over financial concerns, personal conduct and criminal conduct. He continues to gamble despite a large gambling loss that led him to file for bankruptcy in 2001 and a promise to his wife that he would stop gambling and seek counseling. He never sought counseling. Also, he failed to list a gambling-related arrest in 2000 on his security clearance application. While it is commendable that he has completed his Chapter 13 bankruptcy plan and resolved two judgments, his failure to address the gambling pattern raises the possibility that financial concerns could recur. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on November 18, 2004. 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. <sup>(1)</sup> The SOR alleges specific concerns over finances (Guideline F), personal conduct (Guideline E), and criminal conduct (Guideline J). Applicant responded to these SOR allegations in an undated, notarized Answer which was received on January 13, 2005, and requested a hearing.

After Department Counsel stated the case was ready to proceed on July 13, 2005, the case was assigned to me on July 19, 2005. On July 21, 2005, DOHA issued a Notice of Hearing and set this case to be heard on August 17, 2005, in a city near where Applicant lives and works.

At the hearing the government presented six exhibits (Exhibits 1-6) which were admitted into evidence without objection. Applicant testified and offered one exhibit which was admitted into evidence. (Exhibit A) Applicant was allowed seven days additional time to submit supplementary evidence which he did on August 23, 2005. (TR 95; Exhibit B) On August 24, 2005, Department Counsel indicated she had no objection to the documents being admitted into evidence; Exhibit was admitted and the record closed. The transcript (TR) was received on August 29, 2005.

### **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 findings of fact:

Applicant, 57 years old, completed a Security Clearance Application (SF 86) in February 2003. He has been employed as a handler specialist by a defense contractor from September 1996 to present. He served in the military from 1966 to 1969 as an E-4. (Exhibit 1; TR 39)

Applicant married in 1978 and has two children: one born in 1971, and one born in 1978. (Exhibit 1)

### **Finances and Personal Conduct**

Applicant's gambling magnified his financial problems. From 1998 to 2002 he would gamble two to three times per week: he played the slot machines, blackjack, and also poker. He would lose approximately \$500 to \$700, sometimes more and sometimes less. Sometimes he would use credit cards or pay day loans to support his gambling. In 2000-2002 he and his wife discussed his gambling and they agreed that he had a gambling problem and that he should stop gambling. Even though he decided to stop gambling, he gambled three more times in early 2003. He admitted he has "gone behind her back on three times and gambled." His intent in 2003 was to go to counseling to help himself to stop gambling permanently. He wanted to keep the fact that he had continued to gamble a secret from his wife. In April 2003 he told a Defense Security Service (DSS) investigator that he had "no plans on gambling in the future."<sup>(2)</sup> Even though he agreed he needed counseling for gambling, he never made an appointment regarding this problem because he had been "very busy." (Exhibit 6; TR 41-43, 62-68, 76-80) Indeed Applicant continued to gamble in 2004 and 2005, but does not tell his wife how often he gambles. (TR 80-81) A 2004 credit report shows that a casino returned Applicant's check of \$150 in October 2004; Applicant said he had subsequently paid this check. (Exhibit 4; TR 94-95) He never went to a counselor as he planned to continue to gamble. His wife controls the budget and he uses his discretionary money in the budget to gamble. (TR 87-91, 93-94) (SOR 1.d., 1.e., and 1.f.; SOR 2.c., 2.d.)

In 2003 Applicant provided a Financial Statement showing he made \$4,300 per month, paid \$867 in deductions and had take home pay of \$3,467. His wife made \$3,467, so their combined net income totaled almost \$7,000. At the time he was paying \$1,400 for his bankruptcy plan and even with other payments such as a \$1,100 mortgage payment he still had a net monthly remainder of over \$2,000. In addition, he had \$155,000 in real estate assets, \$8,000 in stocks and

bonds and cars valued at \$6,000, as well as \$35,000 in miscellaneous assets. (Exhibit 6; TR 50-55)

SOR 1.a. Applicant filed for Chapter 13 bankruptcy in April 2001 to clear up the debts that arose from purchases for household goods and clothing as well as from his gambling. Applicant had \$20,000 in gambling debts but he has paid off all of his debts and was discharged after he completed the Chapter 13 Plan in November 2004. He had other debts he failed to include in his bankruptcy petition. (Answer; Exhibits 5, 6; Exhibit A; TR 40, 86-88)

SOR 1.b. Applicant was indebted to Creditor #1 for \$2,563 for a judgment entered in September 2003; that judgment was satisfied in February 2005. (Exhibits 3, 4; Exhibit B)

SOR 1.c. Applicant was indebted to Creditor #2 for \$1,516 for a judgment entered in March 2003; that judgment was satisfied in September 2005. (Exhibits 3, 4; Exhibit B)

### **Personal Conduct and Criminal Conduct**

On his SF 86 Applicant failed to disclose adverse information regarding multiple DUI arrests in response to Question 24. Your Police Record - Alcohol/Drug Offenses. (Exhibit 1; TR 40) In his Answer Applicant admitted eight alcohol-related arrests from 1982 to 1987, but denied he intended to falsify by these omissions on his security form. (SOR 2.a, 2.b.) He denied all of the criminal conduct. (SOR 3.a, 3.b.) He credibly explained that he could not remember all of the times he had alcohol-related arrests, so he listed the last arrest in 1987. Subsequently, he has not had any alcohol-related arrests as he stopped drinking in 1987. (Answer; Exhibit 1; TR 40, 46, 48, 82-84) Weighing all of the evidence, I conclude Applicant had no intent to falsify his DWI criminal record on his security form as he listed the most recent arrest in response to Question 24 and has had no subsequent incidents.

On the other hand, Applicant failed to disclose adverse information with regard to Question 26, other offenses, regarding his arrest in 2000 for promoting gambling in a lottery pool. While he denied the arrest he admitted that the police came to his job, took him to the police station, questioned him, and booked him. He did not tell his wife about the arrest. Because the case was dismissed, he explained that he never viewed it as an arrest and had forgotten it. (SOR 3.a.) (TR 43-45, 55-59, 68-76, 84-85, 92-93; Exhibit 6) His forgetting such a recent arrest is not credible even though it was dismissed. Weighing all of the evidence, I conclude Applicant had an intent to falsify his criminal record on his security form by omitting this arrest. Also, Applicant was arrested in March 1970 and charged with common assault. (SOR 3.b.)

## **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 potentially disqualifying or mitigating condition is not definitive. 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**

***The Concern:* 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.**

### **Guideline E - 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.**

### **Guideline J - Criminal Conduct**

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

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**

The Government established disqualifying conditions that could raise a security concern and may be disqualifying under Financial Disqualifying Condition (E2.A6.1.2.1. history of not meeting financial obligations, E2.A6.1.2.3. inability or unwillingness to satisfy all of his debts, and E2.A6.1.2.5. financial problems that are linked to gambling, drug abuse, alcoholism, or other issues of security concern.) Several issues raised concerns: Applicant filed for Chapter 13 bankruptcy in 2001 which was discharged in November 2004; he had two large debts where judgments were entered in 2003 which were not resolved until 2005. While Applicant eventually took action to resolve these financial concerns, he has failed to address his continuing gambling practices: even though he lost \$20,000 in 2000 which led to his filing for bankruptcy. In fact, he has continued to gamble through 2005 and has not disclosed this gambling habit to his wife because of an earlier promise to her that he would stop gambling and seek counseling. As recently as October 2004 he had a \$150 returned check from a casino. He failed to clarify how often he continues to gamble and how much money he continues to lose.

While Applicant has shown financial responsibility by completing his Chapter 13 bankruptcy plan and resolving his judgments, his continuing to gamble and to avoid counseling for gambling raises the potential for future financial problems. Thus, he fails to meet E2.A6.1.3.4. as he has not received any counseling for the problem. He also fails to meet E2.A6.1.3.6. as there are not yet clear indications that the problem is being resolved or is under control with respect to his gambling as it is with respect to his other debts. Hence, Applicant has failed to mitigate<sup>(3)</sup> all of these financial concerns. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant under subparagraphs 1.a. through 1.c. where he has resolved financial issues but against Applicant under SOR Paragraph 1 as he failed to mitigate the allegations in SOR subparagraphs 1.d. through 1.f.

### **Personal Conduct**

Under Guideline E Applicant's answer to Question 24 on the 2003 security clearance application raised security concerns as he disclosed only a 1987 DWI arrest with probation, but did not disclose several earlier alcohol-related arrests on that form. Also with respect to Question 26, other offenses, he answered "No" and failed to reveal a May 2000 arrest for Promoting Gambling, Second Degree. Under Personal Conduct Disqualifying Condition E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations. . . determine security clearance eligibility or trustworthiness . . .*), a finding of falsification requires evidence that the Applicant acted with an intent to mislead or deceive the government. The record evidence as a whole must be considered to determine whether there is direct or circumstantial evidence concerning Applicant's state of mind at the time the statement was made.

Applicant credibly established that he had no intent to falsify with respect to the DWI arrests as he listed the 1987 DWI arrest which was the most recent and has had no subsequent arrests. Looking at all of the evidence I conclude that at the time he completed his security clearance form, he had no intent to deceive with respect to Question 24. His explanations at the hearing were credible. Thus, I conclude Applicant did not deliberately, with an intent to deceive, answer question 24 incorrectly.

However, his explanation with respect to Question 26 was not credible as the 2000 arrest was recent and since police came to his job site to escort him to the police station and book him. It is not credible the he forgot that arrest. Thus, I conclude Applicant did deliberately, with an intent to deceive, answer question 26 incorrectly. This omission is especially of concern as he had chosen to continue to gamble even after he and his wife decided he should stop gambling because of the financial impact and after he agreed to seek counseling. He failed to seek counseling for gambling as he reasoned gambling was legal and he continued to enjoy it. Indeed, he continues to gamble and has not informed his wife that he continued to gamble from 2003 to 2005. Thus under E2.A5.1.2.4. security concerns are raised with respect to his personal conduct or concealment of information that increases his vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail.

Applicant has refuted and mitigated only part of the security concerns under Personal Conduct. After looking at him as a whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 2.a. and 2.a.(1) through (8), but against him on subparagraphs 2.b., 2.c., and 2.d. under SOR Paragraph 2.

### **Criminal Conduct**

The government's security concerns under criminal conduct were linked to the 2000 arrest for promoting gambling, a 1970 arrest for common assault, and the concerns over his personal conduct in his failure to provide complete and truthful answers on his security clearance application. Under E2.A10.1.2. conditions that could raise a security concern and may be disqualifying include: E2.A10.1.2.1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged. Applicant testified he was booked for promoting gambling in 2000, but the charge was dismissed. While I found he had no intent to falsify with respect to Question 24, he did falsify Question 26. Thus, there

remain security concerns over his criminal conduct based on allegations 3.a. and 3.c, in part. The 1970 arrest which is 35 years prior does not raise security concerns: it is mitigated under E2.A10.1.3.1. as the criminal behavior was not recent.

After looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, <sup>(4)</sup> I rule for Applicant on subparagraph 3.b., but against him under subparagraphs 3.a. and 3.c. 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: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.a.(1): For Applicant



Subparagraph 2.a.(2): For Applicant

Subparagraph 2.a.(3): For Applicant

Subparagraph 2.a.(4): For Applicant

Subparagraph 2.a.(5): For Applicant

Subparagraph 2.a.(6): For Applicant

Subparagraph 2.a.(7): For Applicant

Subparagraph 2.a.(8): For Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: For Applicant

Subparagraph 3.c.: Against 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 the Applicant. Clearance is denied.

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. The DSS agent prepared a Statement in April 2003 (Exhibit 6) from information obtained during an interview with Applicant, but Applicant later declined to sign the statement because he was concerned about signing a document which revealed seven unlisted DWI's. Also, Applicant disputed the accuracy of some of the information in the document. However, Department Counsel questioned him about each element in the document; he explained where he disagreed with the words in the statement. Applicant did not object to the admissibility of Exhibit 6, but explained he had not wanted to sign the statement initially as he had provided the information "off the top" of his head. He explained that some of the information was old and that he had changed his life. (TR 36-39, 50-59, 59-61)

3. **E2.A6.1.3. Conditions that could mitigate security concerns include:** E2.A6.1.3.1. The behavior was not recent; E2.A6.1.3.2. It was an isolated incident; E2.A6.1.3.3. 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); E2.A6.1.3.4. 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; E2.A6.1.3.5. The affluence resulted from a legal source; and E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

4. **E2.A10.1.3. Conditions that could mitigate security concerns include:** E2.A10.1.3. 1. The criminal behavior was not recent; E2.A10.1.3. 2. The crime was an isolated incident; E2.A10.1.3.3. The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life;

E2.A10.1.3. 4. The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur; E2.A10.1.3. 5. Acquittal; E2.A10.1.3. 6. There is clear evidence of successful rehabilitation.