

DATE: May 10, 2004

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 03-15958

**DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Nygina T. Mills, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 50 years old, and works for a defense contractor. Applicant has seven unpaid credit card delinquent debts totaling more than \$12,000. Applicant also has more than \$2,000 in unpaid gambling debts. He incurred these debts after being discharged in bankruptcy in 1999. Applicant failed to disclose the delinquency of these debts on his security clearance application. He failed to mitigate the financial considerations and personal conduct concerns. Clearance is denied.

**STATEMENT OF THE CASE**

On September 10, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

Applicant submitted a signed statement, notarized on October 9, 2003. He admitted the allegations contained in Paragraphs 1.a., 1.b., 1.d. to 1.o., and 2.a. of the SOR. He denied the allegation contained in Paragraph 1.c. of the SOR. He requested the case be decided on the written record in lieu of a hearing.

On November 10, 2003, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file a response to the FORM within the scheduled due date of December 26, 2003. The case was assigned to me on January 15, 2004.

## FINDINGS OF FACT

Applicant's admissions are incorporated herein as 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 50 years old. Applicant is divorced and has two children. He is currently employed with a defense contractor. (Item 4 at 1 to 3)

Applicant was divorced in 2001. He filed bankruptcy upon the advice of his lawyer in 1998 when his marriage failed. His wife filed her own bankruptcy at the same time. His debts were discharged. The debts listed on the SOR were incurred after his bankruptcy discharge. He had \$1,200 monthly balance on his paycheck after taxes and child support deductions. Then, starting in 1999, Applicant started gambling at a local casino. In the fall of 2001 he stopped gambling when he realized he was losing and merely incurring other debts. (Item 5 at 1 and 2; Item 7)

<b>DEBT TYPE AND SOR ALLEGATION</b>	<b>TOTALS</b>	<b>CURRENT STATUS</b>	<b>RECORD EVIDENCE</b>
Credit card debt Subparagraphs 1.a. to 1.e., 1.l., and 1.m.	\$12,191	Unpaid and delinquent	Answer (Item 2); Statement (Item 5); Credit Report (Item 6)
Gambling casino debts, subparagraphs 1.f. through 1.k.	\$2,065	Unpaid but for \$435 as of July 2002.	Answer (Item 2); Statement (Item 5); Credit Report (Item 6)

Applicant, as of July 29, 2002, when he completed a financial statement, had \$199 remaining from his monthly income after expenses with which to pay his delinquent debts. (Item 5 at 4)

Applicant failed to disclose fully on his Security Clearance Application (SCA) that in the previous seven years he had financial delinquencies of more than 180 days past due (Question 38) and he then had delinquent debts more than 90 days past due (Question 39). In fact, Applicant was delinquent by more than 90 days on all the debts listed in Paragraph 1 of the SOR at the time he completed the security clearance application in April 2002. (Answer, Item 2; Item 4 at 1; Item 6 at 1, 3-8)

## 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 judgement, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing he use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* Section 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicted upon the applicant meeting the security guidelines contained in the Directive.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of:

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation;
- (3) how recent and frequent the behavior was;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the voluntariness of participation;
- (6) the presence or absence of rehabilitation and other pertinent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence (See Directive, Section E2.2.1. of Enclosure 2).

Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. See *Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. See Exec . Or. 12968 Section 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

**Guideline F - Financial Considerations:**

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive, ¶ E2.A6.1.1.

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

- (1) A history of not meeting financial obligations. Directive, ¶ E2.A6.1. 2.1.
- (3) Inability or unwillingness to satisfy debts. Directive, ¶ E2.A6.1.2.3.

Applicable conditions that could mitigate security concerns include:

None

**Guideline E - Personal Conduct:**

(A) 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. Directive, ¶ E2.A5.1.1.

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

(2) The deliberate omission, concealment, falsification or misrepresentation of relevant and material facts from any personnel security questionnaire, personal history statement or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; Directive, ¶ E2.A5.1.2.2.

(C) Conditions that could mitigate security concerns include:

None

**CONCLUSIONS**

I conclude that under Guideline F (Financial Considerations) the Government proved its case. Therefore, the Disqualifying Conditions (DC) 1 (*a history of not meeting financial obligations*) and DC 2 (*an inability or unwillingness to satisfy debts*) apply. Applicant's delinquent financial debts are sizable and were when he completed the SCA. There is no evidence he paid anything on these debts between 1999 and 2003, except \$435 on his casino gambling debt. His statement admitted he had not paid anything on some of the debts for a considerable period of time.

There are no Mitigating Conditions (MC) applicable here. Applicant has not presented any evidence that he has paid these debts beyond part of the gambling debt. Therefore, I find against Applicant on this guideline.

Regarding Guideline E (Personal Conduct), I conclude the Government proved its case. The SOR alleges Applicant falsified material facts on the SCA, Question 38 (delinquencies over 180 days) and Question 39 (delinquencies over 90 days) by answering "no" to both questions. DC 2 (*the deliberate, concealment, or falsification of relevant and material facts from any personal security questionnaire or similar form used to determine security clearance eligibility or trustworthiness*) applies to this case.

I conclude there are no MC which apply to these facts. Therefore, I find against Applicant under this guideline.

**FORMAL FINDINGS**

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

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

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: Against Applicant

Subparagraph 1.o.: Against Applicant

Paragraph 2 Guideline E: Against Applicant

Subparagraph 2.a.: Against Applicant

**DECISION**

In light of all the circumstances and facts presented by the record in this case, it is not clearly consistent with the interest of national security to grant a security clearance to Applicant. Clearance is denied.

---

Philip S. Howe

Administrative Judge