

DATE: August 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 04-05085

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The record evidence shows Applicant has a history of financial problems linked to gambling. She presented sufficient evidence to explain, extenuate, or mitigate the financial considerations security concern. Clearance is granted.

STATEMENT OF THE CASE

Applicant is challenging the Defense Department's preliminary decision to deny or revoke her security clearance. Acting under the relevant Executive Order and DoD Directive, [\(1\)](#) on June 8, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) detailing the basis for its decision. The SOR--which is in essence the administrative complaint-- alleges a security concern under Guideline F for financial considerations. Applicant replied to the SOR on July 1, 2005, and requested a hearing. The case was assigned to me January 23, 2006. Thereafter, a notice of hearing was issued scheduling the hearing for March 6, 2006. Applicant appeared without counsel and the hearing took place as scheduled. At Applicant's request, the hearing was reconvened on March 9, 2006, and a brief session was held. DOHA received the transcripts from both sessions on March 17, 2006.

At the hearing, I left the record open until April 30, 2006, to allow Applicant to submit additional documentary evidence. Applicant made three posthearing submissions, two of which were received after the April 30th deadline. Her submissions are marked and admitted, without objections by Department Counsel, as Applicant's Exhibits L, M, and N.

FINDINGS OF FACT

In her written reply to the SOR, Applicant's answers were mixed, admitting some allegations and denying others. Her admissions are incorporated herein as findings of fact. In addition, after considering the record evidence as a whole, I make the following findings of fact.

1. Applicant is a 43-year-old divorced woman who is seeking to retain a security clearance for her employment with a

company engaged in defense contracting. She works as a software engineer. Her current annual salary is about \$95,000, (2) and she receives \$754 per month in child support for her son. She has worked for this company since about August 2001. As an employee, Applicant is a steady, competent performer and valued team player. (3) She was twice named employee-of-the-month in July 2003 and January 2004 based on her outstanding job performance. (4) Applicant was first granted a security clearance in about 1988, and the Defense Department granted her a clearance in about 1993. (5)

2. Applicant submitted a detailed time line of events that have occurred in her life that may have been a factor in her financial difficulties and the actions she took to resolve the issues. (6) The time line is incorporated herein as findings of fact. Of note are the following events: (a) the death of Applicant's maternal grandmother and mother in December 1991; (b) the separation from her husband (he left) in December 1991; (c) she received news of a possible job layoff in February 1992, although ended up keeping the job; (d) divorced in November 1992 after spending about \$15,000 on a custody dispute; (e) she was unemployed living on savings and credit cards for about 11 months from August 1993 to July 1994; (f) her son was diagnosed as severely emotionally disturbed in July 1995 and placed in self-contained special-education class; (g) her father passed away in June 2000; (h) she provided some financial assistance to family members due to major health problems in August 2001; and (i) she provided some financial assistance to a long-time friend for expenses associated with the friend's child's double-lung/heart transplant in 2004. Her son has improved dramatically since her last move in August 2001, and he is now in regular education classes. Her family members have recovered and are getting back on their feet financially. She continues to provide financial assistance to her friend as the child continues to experience health problems.

3. Applicant has a history of financial problems lined to gambling, as evidenced by collection and charged-off accounts. (7) She used gambling as an escape from the problems and stressors in her life. Beginning in about January 1995 and ending in December 2004, Applicant was a regular customer at casinos in the Gulf Coast area. She has no idea how much money she lost gambling during this period. Between 1995 and 2000, her gambling escalated to the point where she made sure the rent, utilities, and other basic bills were paid, that there was money for food, and the rest of her income went for gambling. (8) Her gambling decreased when she moved away from the Gulf Coast area in August 2001. Thereafter, she gambled periodically when she was in the Gulf Coast area to visit family. She last gambled in December 2004 when she planned a three-day casino trip, but she was so disgusted with the waste she left after one day.

4. On April 27, 2006, Applicant entered counseling with a licensed professional counselor to address her gambling, cope with physical illness, and resolve delayed grief. As of July 27, 2006, Applicant had seven counseling sessions. According to the counselor, Applicant's gambling issues "are in sustained full remission with a very low probability of relapse." (9) Also, the counselor notes that Applicant has identified triggers and has developed a relapse prevention plan. Overall, the counselor is of the opinion that Applicant is functioning very well.

5. In about May 2006, Applicant was diagnosed with myoclonus, (10) which is a neurological illness or disorder that features irregular involuntary contraction of muscles. Applicant is sensitive to noises of various frequencies and degrees of volume, as noise can trigger an episode of uncontrollable muscle jerks and movements. As a result, Applicant avoids going out in public places where she would be subjected to such noise. While discussing this with her counselor, Applicant realized it is now even more unlikely that she would return to a casino given the noises in a casino would likely trigger an episode.

6. The SOR concerns 11 delinquent debts for a total of more than \$26,000. The debts are based on collection or charged-off accounts. Applicant has now paid or settled all accounts. Each account is discussed below.

7. SOR subparagraph 1.a concerns a \$7,426 credit card account charged-off in about December 1997. Applicant settled this account for \$3,500 in March 2006. (11)

8. SOR subparagraph 1.b concerns a \$80 delinquent account placed for collection in about June 1999. Applicant paid this account in October 2004. (12)

9. SOR subparagraph 1.c concerns a \$336 delinquent account placed for collection in about April 2002. Applicant paid

this account in October 2004. [\(13\)](#)

10. SOR subparagraphs 1.d, 1.e, 1.f, and 1.g concern delinquent medical accounts placed for collection in 2002 or 2003. The total amount of these four accounts is \$278. Applicant was delayed, somewhat, in resolving these accounts because the medical debts were unnamed. Applicant paid these four accounts in April 2006. [\(14\)](#)

11. SOR subparagraph 1.h concerns a \$5,415 credit card account charged-off in about August 2003. Applicant settled this account for \$2,707 in June 2005. [\(15\)](#)

12. SOR subparagraph 1.i concerns a \$109 delinquent account placed for collection in September 2003. Applicant paid this account in June 2005. [\(16\)](#)

13. SOR subparagraph 1.j concerns a \$341 delinquent account placed for collection in about March 2004. Applicant paid this account in October 2004. [\(17\)](#)

14. SOR subparagraph 1.k concerns a \$12,875 credit card account placed for collection in about May 1998. Applicant settled this account for \$3,750 in March 2006. [\(18\)](#)

15. In addition to the delinquent accounts in the SOR, Applicant had a \$900 delinquent credit card account that was opened in 1987 and charged-off at some point. Applicant paid this account in October 2004. [\(19\)](#)

16. During the hearing, I asked a series of questions to determine if Applicant was current with her federal and state income tax obligations. [\(20\)](#) Applicant candidly admitted that she had not recently filed returns, and she was unaware if she owed taxes for these years. Applicant attributed her negligence in failing-to-file to denial associated with her gambling. [\(21\)](#) After the hearing, in April 2006, Applicant filed state and federal tax returns for tax years 2003, 2004, and 2005, with total refunds owed her in excess of \$9,500. [\(22\)](#) She received about \$9,500 in refunds from the IRS in May 2006. [\(23\)](#)

17. Overall, Applicant's financial situation is now much improved. She has no credit cards and manages her money on a day-to-day basis by using a debit card tied to her checking account. She does not have a car loan, and she does not own any real estate, although her long-term plan is to buy a home. As of March 6, 2006, she had \$7,705 in her checking account. [\(24\)](#) As of April 28, 2006, she had about \$5,100 in her checking account, which takes into account paying two debts for more than \$7,000 in March 2006 as noted above. [\(25\)](#) More recently, as of July 31, 2006, Applicant had about \$2,000 in her checking account and more than \$19,000 in her savings account. [\(26\)](#) In addition, she stands to receive about \$15,000 sometime during 2006 as her share of the proceeds from the sale of her late father's home. [\(27\)](#)

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on 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. A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty. [\(28\)](#) Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting a clearance.

BURDEN OF PROOF

The only 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. [\(29\)](#) There is no presumption in favor of granting or continuing access

to classified information.⁽³⁰⁾ The government has the burden of presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted.⁽³¹⁾ An applicant is responsible for presenting witnesses and other evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁽³²⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽³³⁾

No one has a right to a security clearance.⁽³⁴⁾ And as noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽³⁵⁾ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

CONCLUSIONS

Under Guideline F,⁽³⁶⁾ a security concern typically exists for two different types of situations--significant unpaid debts or unexplained affluence. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information.

Here, based on the record evidence as a whole, the government established its case under Guideline F. As established above, Applicant has a history of not meeting financial obligations as well as inability or unwillingness to pay one's just debts.⁽³⁷⁾ What's notable here is Applicant's financial problems are linked to gambling.⁽³⁸⁾ Indeed, it appears the root cause of Applicant's financial problems was she used gambling as a means to temporarily escape the stress and stain of her life.

These facts and circumstances, taken together, raise a security concern under the guideline.

I reviewed the six mitigating conditions under the guideline and conclude that she has presented sufficient evidence to explain, extenuate, or mitigate the financial considerations security concern. Each relevant mitigating condition (MC) is discussed below.

First, MC 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)--applies, in part, in Applicant's favor. Although it's clear that Applicant's financial problems were not wholly beyond her control (she elected to gamble after all), it's also clear that she experienced a series of life events, as noted in the time line, that had a significant effect on her life. These events also played a part in her financial problems. To that extent, these circumstances help explain her behavior.

Second, MC 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--applies in Applicant's favor. As of July 27, 2006, Applicant had seven counseling sessions with a licensed professional counselor to address her gambling and other issues. The counselor believes Applicant's gambling is in sustained full remission and unlikely to recur. Coupled with the fact that Applicant is no longer using credit cards and is no longer gambling, the clear indications are that her problem is under control.

Third, MC 6--the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts--applies in Applicant's favor. Applicant paid or settled all 11 delinquent accounts in the SOR, as well as one delinquent credit card account not in the SOR. Several of the accounts were resolved in 2004 and 2005 before the hearing, while the four small medical accounts and two major credit card accounts were resolved shortly after the hearing. In addition, Applicant took prompt action after the hearing to rectify her state and federal income tax obligations, which resulted in refunds. Her overall financial situation is now stable, as evidenced by her annual salary of \$95,000, no credit cards, no credit card debt, no car payments, and about \$20,000 in the bank with another \$15,000 on the way once the sale of her late father's house is concluded. Unlike many applicants in financial cases, Applicant presented detailed, comprehensive documentary information supporting her case. And her overall presentation shows she has a firm grasp or command of her financial situation. Taken together, these circumstances show Applicant has made a good-faith effort to resolve her

financial problems.

In addition, I considered Applicant's case in light of the whole-person concept. Applicant is a mature individual with years of service to this country as an employee of a defense contractor while holding a security clearance. Her financial problems arose primarily due to gambling as a escape from the stress associated with a series of difficult life events and the challenges of raising an emotionally disturbed son. She has made real, genuine progress by paying or settling all the delinquent accounts as well as getting caught up with filing state and federal income tax returns. Of at least equal importance, she stopped gambling more than a year ago, and she received counseling to prevent relapse. Her financial condition has stabilized, and her son's condition has improved to the point where he is now mainstreamed in regular education classes. Based on the record evidence as a whole, the likelihood of continuance or recurrence of her financial problems linked to gambling is low.⁽³⁹⁾ Accordingly, for all the reasons discussed above, Guideline F is decided for Applicant.

To conclude, Applicant presented sufficient evidence to explain, extenuate, or mitigate the financial considerations security concern. And she has met her ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I have considered the whole-person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

FORMAL FINDINGS

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

SOR ¶ 1-Guideline F: For Applicant

Subparagraphs a-k: 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.

Michael H. Leonard

Administrative Judge

1. Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended (Directive).
2. Exhibit I.
3. Exhibit J.
4. Exhibit L (Addendum to Exhibit J).
5. Exhibit 1 (Response to Question 31).
6. Exhibit B.
7. Exhibits 2, 3, 4 and 5.
8. R. 83-84.
9. Exhibit N.
10. Exhibit N.

11. Exhibits F and L (Addendum to Exhibit F).
12. Exhibit A (pages 2-3).
13. Exhibit A (pages 4-5).
14. Exhibit L (Addendum/Response to Exhibit 5).
15. Exhibit A (pages 6-7).
16. Exhibit K.
17. Exhibits A (pages 8-9) and E.
18. Exhibits G and L (Addendum to Exhibit G).
19. Exhibit A (pages 11-13).
20. R. 101-106.
21. R. 104-105.
22. Exhibit L (Response Regarding Taxes).
23. Exhibit M.
24. Exhibit H.
25. *See* Exhibit L (Addendum to Exhibit H).
26. Exhibit N.
27. Exhibits D, M, and N.
28. Executive Order 10865, § 7.
29. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
30. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
31. Directive, Enclosure 3, Item E3.1.14.
32. Directive, Enclosure 3, Item E3.1.15.
33. Directive, Enclosure 3, Item E3.1.15.
34. *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) ("It is likewise plain that there is no 'right' to a security clearance, so that full-scale due process standards do not apply to cases such as Duane's.") (citations omitted).
35. 484 U.S. at 531.
36. Directive, Enclosure 2, Attachment 6.
37. Item E2.A6.1.2.1. A history of not meeting financial obligations; and Item E2.A6.1.2. 3. Inability or unwillingness

to satisfy debts.

38. Item E2.A6.1.2.5. Financial problems that are linked to gambling, drug abuse, alcoholism, or other issues of security concern.

39. Directive, Enclosure 2, Item E2.2.1.9. The likelihood of continuance or recurrence.