

KEYWORD: Personal Conduct, Financial

DIGEST: Applicant, a 58-year-old financial analyst, became very depressed after his divorce and began gambling. Between his marital debts and his gambling debts, he owed nearly \$50,000 in 2001. Without filing bankruptcy, he has resolved most of this debt. He currently owes \$2,700. He has quit his casino gambling, although he continues to bet on the horses occasionally. He changed his lifestyle to include more family, church and physical activities. He has refuted the government's case under Guideline E and mitigated the government's concerns under Guideline F, regarding a security clearance. Clearance is granted.

CASENO: 04-07360.h1

DATE: 01/30/2006

DATE: January 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-07360

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 58-year-old financial analyst, became very depressed after his divorce and began gambling. Between his marital debts and his gambling debts, he owed nearly \$50,000 in 2001. Without filing bankruptcy, he has resolved most of this debt. He currently owes \$2,700. He has quit his casino gambling, although he continues to bet on the horses occasionally. He changed his lifestyle to include more family, church and physical activities. He has refuted the government's case under Guideline E and mitigated the government's concerns under Guideline F, regarding a security clearance. Clearance is granted.

STATEMENT OF THE CASE

On June 15, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to 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 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 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. Specifically, the SOR set forth security concerns arising under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. On July 6, 2005, Applicant submitted a notarized response to the allegations. He did not indicate a preference for a hearing or a decision on the record. On August 18, 2005, he submitted a request for a hearing. ⁽¹⁾

This matter was assigned to me on November 21, 2005. A notice of hearing was issued on November 22, 2005 for a hearing to be held on December 16, 2005. An amended notice of hearing was issued on December 14, 2005, and a

hearing was held on December 15, 2005. Fifteen Government Exhibits, four Applicant Exhibits, and one Joint Exhibit were admitted into evidence. Applicant and one witness testified. The hearing transcript was received on January 9, 2006.

FINDINGS OF FACT

Applicant admitted, with explanation, the allegations in subparagraphs 1.c., 1.f. and 2.a. through 2.c. of the SOR.⁽²⁾ Those admissions are incorporated here as findings of fact. He denied the remaining allegations. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 58-year-old financial analyst for a defense contractor.⁽³⁾ He has worked for this contractor for more than twenty-four years.⁽⁴⁾ He completed a security clearance application (SF 86) in December 2001.⁽⁵⁾

Applicant received a Bachelor of Science degree in 1974 from a major university in the United States (U.S.).⁽⁶⁾ He married in 1993.⁽⁷⁾ He and his wife divorced in 1998.⁽⁸⁾ He has two daughters and seven grandchildren.⁽⁹⁾

As part of his divorce settlement in 1998, Applicant assumed responsibility for payment of \$30,000 of credit card and other marital debt.⁽¹⁰⁾ Subsequent to his divorce, he became depressed, started gambling, and isolated himself.⁽¹¹⁾ He incurred additional gambling debts totaling \$20,000.⁽¹²⁾ Thus, by 2001, Applicant had incurred debt totaling nearly \$50,000. By October 2003, he still owed about \$15,000-\$20,000, much of which has been paid.⁽¹³⁾ His debts listed in the SOR are as follows:

SOR ¶	DEBT-TYPE	DEBT-AMOUNT	CURRENT STATUS
1.a.	electric bill ⁽¹⁴⁾	\$97 ⁽¹⁵⁾	Paid September 17, 2003 ⁽¹⁶⁾
1.b.	credit card (divorce) ⁽¹⁷⁾	\$6,585 ⁽¹⁸⁾	Paid May 20, 2005 ⁽¹⁹⁾
1.c.	credit card ⁽²⁰⁾	\$1,880 ⁽²¹⁾	Unpaid ⁽²²⁾
1.d.	credit card/loan ⁽²³⁾	\$6,945 ⁽²⁴⁾	Paid May 5, 2003 ⁽²⁵⁾
1.e.	loan ⁽²⁶⁾	\$2,273 ⁽²⁷⁾	Paid July 4, 2004 ⁽²⁸⁾

As of the hearing, he still owed approximately \$2,700 in debt.⁽²⁹⁾ This includes credit card debt of \$300 and a loan of \$656, which are not listed on the SOR.⁽³⁰⁾ He did not file for bankruptcy as a method of paying his debt. Applicant ⁽³¹⁾

current net income is \$3,030 a month and his monthly expenses total \$1,950. He has sufficient income to pay the remainder of his debt.

At times, Applicant gambled most of his paycheck, reserving enough money to pay his rent.⁽³²⁾ At some point, he realized he could not continue to gamble.⁽³³⁾ He began going to church, and sought treatment/counseling with a mental health provider for his gambling problem and his depression.⁽³⁴⁾ His counseling began in 2000 and continued until 2003.⁽³⁵⁾ At one point, he and his therapist agreed on 12 twelve sessions of treatment.⁽³⁶⁾ He did not complete these sessions.⁽³⁷⁾ In March 2003, he met with another counselor once, but was not comfortable so he did not continue.⁽³⁸⁾ He also attended gamblers anonymous.⁽³⁹⁾ Throughout this time period, he continued to gamble.⁽⁴⁰⁾ In 2003, on two occasions, he signed a paper directing two different casinos to remove or arrest him if the casinos found him gambling in this establishments.⁽⁴¹⁾ He has not gambled in the casinos since this time.⁽⁴²⁾ He has restructured his life. He plays racquetball and lift weights many evenings, instead of gambling.⁽⁴³⁾ He continues to attend church and is more interactive with his family.⁽⁴⁴⁾

Applicant has not stopped gambling completely.⁽⁴⁵⁾ He bets on horse races several times a year.⁽⁴⁶⁾ He limits the amount of money he bets to \$60.⁽⁴⁷⁾ His friend and co-worker testified to a change in his behavior, especially towards money.⁽⁴⁸⁾ When they first met, Applicant was always short of cash because of his debts, but since he has paid his debts, he is no longer short of cash.⁽⁴⁹⁾ He was aware that Applicant was paying gambling debts and that he bets on horse races occasionally.⁽⁵⁰⁾ He describes Applicant as honest.⁽⁵¹⁾

In September 2002, the police stopped Applicant for speeding.⁽⁵²⁾ When, the police officer smelled alcohol, he performed several field sobriety tests.⁽⁵³⁾ He then read Applicant his Miranda rights and arrested him for Driving Under the Influence (DUI), but did not take him to the police station.⁽⁵⁴⁾ After a field breathalyzer test which indicated a blood-alcohol level of .079, the police officer gave him a citation, returned his driver's license, and then released him to go home in a cab.⁽⁵⁵⁾ Although he listed his 1981 DUI, he failed to list this arrest on his security clearance application. Since he had not been detained, he did not believe he had been arrested, only cited for DUI.⁽⁵⁶⁾ The court dismissed the DUI.⁽⁵⁷⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudication guidelines which must be considered in the evaluation of security suitability. An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set

forth in the adjudicative process provision in Paragraph E2.2., Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (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 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. 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.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁵⁸⁾ The government has the burden of proving controverted facts.⁽⁵⁹⁾ The burden of proof is something less than a preponderance of the evidence.⁽⁶⁰⁾ Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁶¹⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁶²⁾

No one has a right to a security clearance⁽⁶³⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁶⁴⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽⁶⁵⁾ Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.⁽⁶⁶⁾ 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.

CONCLUSIONS

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

Financial Considerations - Guideline F: 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.

Personal Conduct - Guideline E: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulation could indicate that the person may not properly safeguard classified information.

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

The government has established its case under Guideline F. Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1. (*A history of not meeting financial obligations*) and FC DC E2.A6.1.2.5. (*Financial problems that are linked to gambling, drug abuse, alcoholism, or other issues of security concern*) apply. Applicant began gambling after his divorce in 1998. He incurred significant debt from his gambling in addition to the marital debt he had assumed as part of his divorce settlement. He failed to pay much of his debt for a long period of time, and he still has some outstanding bills.

I considered all the Financial Considerations Mitigating Conditions (FC MC), and conclude that FC MC 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*) and FC MC E2.A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) apply. Between his marital debts and his gambling, Applicant incurred nearly \$50,000 of debt by 2001. By 2003, he had paid \$30,000 to \$35,000 of this debt, without filing for bankruptcy. Some of the debt was paid following garnishment and the rest through his efforts. By the time of the hearing, he owed \$2,700. \$900 is new debt. He has taken responsibility for his financial problems. He developed a plan to pay his debt, and followed through. At his current level of income, he can pay off his remaining debt.

A few years ago, he realized he was depressed and could not continue to gamble because of its negative effects on his life. He initiated counseling to address the source of his depression. During these sessions, he also discussed his gambling problem. Although he developed a treatment plan with his therapist, he did not complete all the sessions. He did attend ten sessions of gamblers anonymous. However, neither the counseling nor gamblers anonymous successfully helped him overcome his issues with depression and gambling. Instead, he found that his faith provided him with the strength to manage his gambling problem and resolve his depression. Without intervention by a court or other entity, Applicant took the initiative to take control of his gambling problem. He has stayed away from the casinos. While he still gambles, he not only limits it to off-track betting on horse races, but he also significantly limits the amount of money he bets. His gambling is no longer creating a financial problem as should by his current debt level. Applicant has mitigated the government's security concerns under guideline F.

The government has established its case as to allegations 2.a. through 2.c. under Guideline E. Personal Conduct Disqualifying Conditions (PC DC) E2.A5.1.2.4 (*Personal conduct ... that increases an individual's vulnerability to coercion, exploitation or duress...*) applies. Applicant developed a serious gambling problem after his divorce in 1998. Because of this problem, he ignored his bills and significantly increased his debt. His conduct left him vulnerable to coercion, exploitation or duress.

I considered all the Personal Conduct Mitigating Conditions (PC MC), and conclude that PC MC E2.A5.1.3.5 (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*). By paying off ninety-five per cent of his debt, Applicant has substantially eliminated his vulnerability to coercion, exploitation or duress. He has changed his after work life style to a much healthier one which includes exercise and more family time. He continues to practice his faith which gives him the internal strength and emotional support he needs to control his gambling. It has also helped to resolve his problems with depression. The fact that he has paid most of his large debt without filing bankruptcy shows he can manage his gambling desires. In addition, by self-excluding himself with the casinos, he has made it more difficult to access casino gambling, the source of his large gambling debt. While he still bets on the horses occasionally, he manages this limited amount of betting effectively. With his current lifestyle, he is not vulnerable to coercion, exploitation or duress. He has mitigated the government's concerns as to allegations 2.a. through 2.c. of Guideline E.

The Applicant has controverted the government's allegation of falsification under Guideline E, subparagraph 2.d. of the SOR. When a falsification allegation is controverted, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omissions occurred. [\(67\)](#)

The government has not established its case under Guideline E subparagraph 2.d. The government alleges that Applicant falsified material facts on his latest security clearance application when he failed to list his arrest for DUI in September, 2002. For Personal Conduct Disqualifying Conditions (PC DC) E2.A5.1.2.2. (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire...*) and PC DC E2.A5.1.2.3. (*Deliberately providing false or misleading information concerning relevant and material matters to an investigator...*) to apply, the government must establish that Applicant's omission, concealment or falsification in regards to the 2002 arrest was a relevant and material fact and was deliberate. [\(68\)](#) He listed his 1981 DWI arrest, his court judgments, and his unpaid debts, but did not list the 2002 DUI, a material fact. He has not denied that the police stopped him for speeding and DUI in 2002. He also acknowledges that the police issued him a citation, returned his driver's license and called a taxicab to take him home. He, however, was never taken to the police station. This knowledge is supported by the police report. Although the police report indicates that he was arrested, Applicant did not believe he had been arrested because he was not detained at the police station. When the investigator questioned him about the arrest, he willingly discussed the incident. He also testified about this incident. Thus, when he completed his security clearance application he did not intend to falsify the answer to Question 24. Because he provided other detrimental information and has been forthcoming about his arrest, the government has not established that he intentionally and deliberately failed to provide this information when he completed his security clearance application. Accordingly, for the reasons stated, I find that it is clearly consistent with the national interest to grant a security clearance to Applicant.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is granted.

Mary E. Henry

Administrative Judge

1. During the process of scheduling a hearing, Applicant asked about having his case decided administratively. He, however, never filed a written request for an administrative decision.
2. Applicant's Response to SOR with attachments, dated July 6, 2005, at 1-2.
3. Government Exhibit 1 (Security clearance application, dated August 20, 2003) at 1.
4. *Id.* at 2
5. *Id.* at 1.
6. *Id.* at 2.
7. *Id.*
8. *Id.*
9. *Id.* at 4; Tr. at 18.
10. Tr. at 12; Government Exhibit 2 (Applicant's signed statement, dated October 21, 2003) at 3.
11. Government Exhibit 2, *supra* note 10, at 3; Tr. at 33.
12. Tr. at 12.
13. Government Exhibit 2, *supra* note 10, at 3; Government Exhibit 3 (Credit Report, dated August 29, 2003) at 1.
14. Tr. at 20; Government Exhibit 3, *supra* note 13, at 7.
15. *Id.*
16. Applicant Exhibit A (Copy of bank draft, dated September 17, 2003); Government Exhibit 2, *supra* note 10, at 1.
17. Tr. at 22-23.
18. Government Exhibit 11 (Court garnishment papers, dated August 4, 2003); Government Exhibit 2, *supra* note 10, at 2; Government Exhibit 3, *supra* note 13, at 4.
19. Applicant Exhibit B (Court Satisfaction of Judgment papers, dated May 20, 2005).
20. Tr. at 24; Government Exhibit 9 (Statement of debt owed, dated May 20, 2003).

21. *Id.*; In his response to the SOR, Applicant stated that he planned to resolve this debt by the end of 2005. *See* Applicant's response to SOR, *supra* note 2, at 2. At the time of the hearing, he had not yet paid this debt because of holiday expense. Tr. at 54. He indicated an intent to pay this debt. Tr. at 25. In light of his previous payments, his testimony is credible.
22. *Id.*
23. Government Exhibit 6 (Court garnishment papers, dated August 7, 2000).
24. *Id.*
25. *Id.* at 1; Applicant Exhibit C (Release of Garnishment court papers, dated May 5, 2003).
26. Tr. at 26-28.
27. Government Exhibit 8 (Statement of account information and settlement offer, dated June 24, 2003).
28. Applicant Exhibit D (Copy of money order, dated July 6, 2004 and account settlement proposal 2004); Tr. at 26-28.
29. *Id.* at 46.
30. Tr. at 28.; Government Exhibit 15 (Credit Report, dated October 12, 2005) at 1.
31. Joint Exhibit 1 (Applicant's personal financial statement, dated December 15, 2005).
32. *Id.* at 31-32.
33. *Id.* at 33.
34. *Id.* at 33; Government Exhibit 2, *supra* note 10, at 3.
35. Tr. at 33. In his response to the SOR, applicant admitted that this counseling started in January 2001 and continued through March 2002, as alleged in the SOR. At the hearing, in response to a question from government counsel, Applicant testified to a large period of time for his counseling. Because his testimony encompasses the shorter time frame admitted in his response, his testimony is not inconsistent with his SOR answer.
36. Applicant's response to SOR, *supra* note 1, at 2.
37. *Id.*
38. Tr. at 37-38; Applicant's response to SOR, *supra* note 1, at 2.
39. *Id.*
40. *Id.* at 36.
41. This action is called self-exclusion. Tr. at 33, 35.
42. *Id.* at 38-39.
43. *Id.* at 38.
44. *Id.* at 35, 37-38.
45. *Id.* at 33-34.

46. *Id.*
47. *Id.*
48. *Id.* at 48.
49. *Id.*
50. *Id.*
51. *Id.*
52. Government Exhibit 7 (Police Report, dated September 21, 2002) at 3.
53. *Id.*
54. *Id.*
55. *Id.*; Applicant's response to the SOR, *supra* note 1, at 2-3.
56. Applicant's response to the SOR, *supra* note 1, at 2-3; Tr. at 42.
57. Government Exhibit 14 (United States Department of Justice, Federal Bureau of Investigation, Criminal Justice Information records, dated September 17, 2003) at 2.
58. ISCR Case No. 96-0277 (App. Bd. Jul. 11, 1997) at 2.
59. ISCR Case No. 97-0016 (App. Bd., Dec. 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
60. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
61. ISCR Case No. 94-1075 (App. Bd., Aug. 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
62. ISCR Case No. 93-1390 (App. Bd. Decision and Reversal Order, Jan. 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
63. *Egan*, 484 U.S. at 531.
64. *Id.*
65. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
66. Executive Order No. 10865 § 7.
67. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun.9, 2004)).
68. Applicant admitted he was arrested by the police (subparagraph 2.a.), but denied he deliberately falsified his security clearance application. In light of his denial of deliberate falsification, his answer to the allegation in subparagraph 2.a. is deemed a denial.