

KEYWORD: Finances, Personal Conduct

DIGEST: While Applicant has begun paying two of her delinquent debts and resolved two returned checks, she has not sought financial counseling and has no overall plan to address all of the delinquent debts reported on her credit reports which total over \$60,000. In addition, she has additional creditors where payments are overdue. Under the circumstances, Applicant failed to initiate a sufficient good-faith effort to resolve this indebtedness especially in light of her continuing to gamble on an intermittent basis and her failure to seek support, such as from Gamblers Anonymous. Thus, Applicant has failed to mitigate security concerns over both her personal conduct and her finances. Clearance is denied.

CASE NO: 04-10822.h1

DATE: 06/21/2006

DATE: June 21, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10822

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

While Applicant has begun paying two of her delinquent debts and resolved two returned checks, she has not sought financial counseling and has no overall plan to address all of the delinquent debts reported on her credit reports which total over \$60,000. In addition, she has additional creditors where payments are overdue. Under the circumstances, Applicant failed to initiate a sufficient good-faith effort to resolve this indebtedness especially in light of her continuing to gamble on an intermittent basis and her failure to seek support, such as from Gamblers Anonymous. Thus, Applicant has failed to mitigate security concerns over both her personal conduct and her finances. Clearance is denied.

STATEMENT OF THE CASE

On July 12, 2005, the Defense Office of Hearings and Appeals (DOHA) issued [\(1\)](#) a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The SOR alleges security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Applicant answered the SOR on September 12, 2005. She admitted all the allegations with explanation.

After Department Counsel stated the case was ready to proceed on October 11, 2005, the case was assigned to me on October 12, 2005. On November 10, 2005, DOHA issued a Notice of Hearing and set this case to be heard on November 29, 2005, in a city near where Applicant lives and works. At the hearing the government presented three exhibits (Exhibits 1-3) which were admitted into evidence without objection. Applicant testified and offered four exhibits (Exhibits A-D) which were admitted into evidence without objection. The transcript (TR) was received on December 8, 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 is a 56-year-old technical staff assistant employed by a defense contractor in State #1 since July 2000. Previously, she had worked as a computer specialist for a federal agency from 1973 to 2000, but retired in 2000. She had a security clearance when she worked for the federal government. She was granted a Secret clearance in June 2000. Applicant married in 1972 and has three children born in 1985 (twins) and 1981. (Exhibit 1; TR 31-32; TR 15-16)

Finances and Personal Conduct

When Applicant completed her Security Clearance Application (SF 86) in June 2003, she failed to disclose any financial delinquencies in response to questions 38 or 39. (Exhibit 1)

Subsequently, she explained that in 2001 to 2002 she began to gamble and "started racking up the debts." (TR 13) She gambled regularly from 2002 to 2004 on the quarter slot machines as she was avoiding the issue of her husband's alcoholism. (TR 42-45) Many of the debts were from gambling as she would get cash from credit cards; some were from monthly bills as she had three children in private schools and later in college. Subsequently, she began working with creditors to get the bills paid. Some accounts had been turned over to collection agencies. (TR 13-14; 32) Initially, Applicant testified that she no longer gambles. However, she conceded that she has never attended Gamblers Anonymous (GA) or any other similar support group. She later admitted that she has returned to gambling but only on an intermittent basis. She now tries to limit her gambling to \$50 cash. She gambled three or four times in 2005, but she did not use any of her charge cards or checks to get additional cash to gamble. (TR 14-15; 45)

Credit reports in June and November 2005 documented delinquent debts which total approximately \$64,000 (Exhibits 2, 3):

Applicant admitted Debt 1.a. to Creditor #1 for \$28,870 to a credit card company; the account was closed in March 2004 when she failed to make timely payments. Her gambling was the major cause of this debt though she also used the credit card to get cash for other bills. She has begun making regular payments to Creditor #1 of varying amounts in 2005. After she began making regular payments, the creditor lowered the interest rate on the debt. However, the latest report showed a \$26,705 debt remained in November 2005. (Answer; Exhibits 2,3, Exhibits A, B; TR 17-21)

Applicant admitted Debt 1.b. to Creditor #2 for \$14,175 which is a debt for her using the card to get cash for bills and for gambling. She had two daughters in private school, so she used the card to pay the tuition for them and for her son who was in college. The account was placed for collection in July 2004. She began making payments of \$300 per month in 2005. (Answer; Exhibits 2, 3; TR 22-23)

Applicant admitted Debt 1.c. to Creditor #3 for \$8,022 for an account delinquent since November 2003. She has made some payments to this creditor, but was not able to document her efforts. (Answer; Exhibits 2, 3; TR 23-24)

Applicant admitted Debt 1.d. to Creditor #4 for \$2,722 for a credit card account delinquent since December 2004. She made some payments on this account and then charged her daughter's tuition to that account which raised her debt. (Answer; Exhibits 2, 3; Exhibit C; TR 25-26)

Applicant admitted Debt 1.e. to Creditor #5 for \$120 for a returned check charged off as a bad debt in January 2005. She testified persuasively she has paid this debt even though she had no documentation. (Answer; Exhibits 2, 3; TR 26-27)

Applicant admitted Debt 1.f. to Creditor #5 for \$150 for a returned check charged off as a bad debt in February 2005. She testified persuasively she has paid this debt even though she had no documentation. (Answer; Exhibits 2, 3; TR 26-27)

Applicant admitted Debt 1.g. to Creditor #6 for \$10,408 for an credit card account placed for collection in February 2005. She has paid \$2,000 on this debt. (Answer; Exhibits 2, 3; Exhibit D; TR 27-28)

Applicant acknowledged her gambling problem (SOR 1.h. and 2.a.) which has persisted from 1994 through 2005. Initially, she did not tell her employer about her gambling problem as she feared termination. She has since told her employer about this issue. Her supervisor suggested Applicant attend GA, but she did not seek help from a support group. The employer has no employee assistance program. (SOR 2.b.) (Answer; TR 46-47)

Applicant has not sought any financial counseling. (TR 48-49) Also, she does not have a budget as she found she could not stick to it. She hopes to get part-time work to supplement her income. (TR 29-30) She and her husband each make approximately \$47,000 annually. (TR 31) She also has a pension check from her early retirement from the federal government of \$1,100 monthly. They bought their home in 1995. Their net monthly joint income is \$5,100 with monthly expenses of \$600 for a mortgage, \$540 for a second mortgage as well as \$495 for a car payment, \$260 for utilities, \$66 for cable and internet, \$75 for college loans. (TR 32-36) Also, she now makes monthly payments of \$486 to Creditor #1, and she makes intermittent payments to other creditors. (TR 37-40) She also has three other credit cards not listed in the SOR where she owes \$3,000, \$6,000, and \$400. Two are current and one is not. (TR 40-41) She also has credit cards that her daughters use which are not current. (TR 41)

POLICIES

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."⁽²⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.⁽³⁾

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽⁴⁾

An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant'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 of recurrence.⁽⁵⁾

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.⁽⁶⁾ 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.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.⁽⁷⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽⁸⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽⁹⁾ "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability."⁽¹⁰⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽¹¹⁾ Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline F - Financial Considerations: A security concern exists for an individual who is financially irresponsible. An

individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Guideline E - Personal Conduct: A security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions section below.

CONCLUSIONS

The government established its case under Guideline F as Applicant's delinquent debts raise security concerns under Financial Consideration Disqualifying Conditions E2.A6.1.2.1. (*a history of not meeting financial obligations*), E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*), and E2.A6.1.2.5. (*financial problems that are linked to gambling, drug abuse, alcoholism, or other issues of security concern*). Applicant had multiple debts which total over \$64,000 and became delinquent: beginning in 2004 as a result of her gambling.

While she acknowledged these debts and has begun a repayment plan for only two of the debts, she has failed to resolve any of the debts except for the returned check charges. Even after she began making regular payments and Creditor #1 lowered the interest rate on the debt, she still owes \$26,705 to that creditor alone. The Financial Considerations Mitigating Conditions to consider for Applicant are E2.A6.1.3.3. (*the conditions that resulted in the behavior were largely beyond the person's control (e.g.; loss of employment . . .)*) and E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). While Applicant stated that her husband's alcoholism contributed to her decision to gamble to avoid facing his problems, this defense does not equate to a vindication or a mitigating condition beyond her control that adversely and materially affected her ability to resolve her indebtedness. For example, instead of gambling, she could have sought help from a 12-step support group such as Al-Anon. Thus, none of these mitigating conditions apply as Applicant continues to gamble on a more limited basis and has not sought support from GA or a similar 12-step program even when advised to do so by her employer. While she did present evidence of making some payments, she is unable to remain current on additional credit card debts that are not included in the SOR. While she initiated efforts to repay some overdue creditors, under the circumstances, Applicant failed to demonstrate a sufficient good-faith effort to resolve her overall indebtedness. I conclude Applicant has mitigated allegations subparagraphs 1a., 1.e., 1.f, and 1.g., but has failed to mitigate 1.b., 1.c., 1.d., and 1.h..

In addition, I carefully considered all of the circumstances in light of the "whole person" concept. In considering the "whole person" concept, I have taken into consideration the special circumstances that led her to gamble, but conclude that Applicant has not taken sufficient steps to resolve her indebtedness. I conclude because of these persistent financial concerns and her continuing to gamble in an intermittent basis, Applicant is not eligible for access to classified information.

Personal Conduct

The government established its concerns under Guideline E as Applicant admitted a gambling problem that continues. She initially withheld information about her gambling from her employer; even after she disclosed it, she failed to get the recommended help. Therefore, concerns persist under Personal Conduct Disqualifying Condition E2.A5.1.2.4. *(Personal conduct or concealment of information that increases an individual's 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)*. The record evidence as a whole must be considered to determine whether there are mitigating circumstances. While the pressures from her husband's alcoholism present a sympathetic situation, her decision to gamble does not demonstrate good judgment as an avenue to address that issue. Therefore mitigating condition E2.A5.1.3.5. *(The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress)* does not apply.

In addition, I carefully considered all of the circumstances in light of the "whole person" concept. In considering the "whole person" concept, I have taken into consideration that Applicant has not taken sufficient steps to address her gambling issues as she continued to gamble on an intermittent basis. I conclude because of these persistent concerns, Applicant is not eligible for access to classified information.

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 as follows:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

DECISION

In light of all of 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 Applicant. Clearance is denied.

Kathryn Moen Braeman

Administrative Judge

1. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive).

2. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

3. Directive ¶ E2.2.1.

4. *Id.*
5. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
6. *See* Exec. Or. 10865 § 7.
7. Directive ¶ E3.1.14.
8. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
9. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
10. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
11. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.