

KEYWORD: Financial

DIGEST: Despite filing a Chapter 13 Bankruptcy in February 1998 and receiving a discharge in 2002, applicant continued to experience financial difficulties. These difficulties, compounded by her gambling addiction, necessitated a second Chapter 13 bankruptcy filing in March 2004. Applicant is still in the early stages of her new Chapter 13 five year plan. It is too soon to conclude her financial problems have been resolved and are unlikely to recur. Clearance is denied.

CASENO: 04-12599.h1

DATE: 01/23/2006

DATE: January 23, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12599

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Despite filing a Chapter 13 Bankruptcy in February 1998 and receiving a discharge in 2002, applicant continued to experience financial difficulties. These difficulties, compounded by her gambling addiction, necessitated a second Chapter 13 bankruptcy filing in March 2004. Applicant is still in the early stages of her new Chapter 13 five year plan. It is too soon to conclude her financial problems have been resolved and are unlikely to recur. Clearance is denied.

STATEMENT OF THE CASE

On August 23, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to applicant which 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on September 26, 2005. The case was assigned to the undersigned on November 10, 2005. A Notice of Hearing was issued on November 15, 2005, and the hearing was held on December 7, 2005. The transcript was received on January 18, 2006.

FINDINGS OF FACT

Applicant is a 63 year old employee of a defense contractor.

Applicant began gambling in the early 1990s. At first she was an occasional gambler, and it did not cause her any financial problems. During the second half of the 1990s, she began experiencing a lot of personal problems, which left her depressed. To escape her depression, she began gambling more often, and with funds she could not afford to lose. Eventually, the credit card debt she ran up to fund her gambling caught up with her. In February 1998, when she had about \$20,000.00 in credit card debt, and was one or more payments behind on her mortgage, she filed for bankruptcy under Chapter 13. The bankruptcy court approved a plan for her, and applicant made all of the required plan payments. She received a discharge from the Bankruptcy Court in 2002.

Applicant had stopped gambling in 1997, before she filed for her first bankruptcy. Unfortunately, in 2001 or 2002, she resumed this activity. Initially it was not a problem; however, it soon became one. In early 2004, she went to her accountant to discuss her 2003 tax liability and found out that, because she had taken a couple of distributions from her 401K plan, and had two loans from her employer which were forgiven, her tax liability was more than she could afford. When she spoke with her attorney about this tax debt, the credit card debt she accumulated by gambling, and the fact she was behind on her mortgage payments, he advised her to file another Chapter 13 bankruptcy. Applicant followed his advice and filed a Chapter 13 in March 2004. She is currently making payments pursuant to the Bankruptcy Court's plan, which should be completed in 2009. Applicant has been late making one or more plan payments, but at the present time, she has made all required payments.

In January 2004, applicant began counseling to deal with her gambling addiction. During the same month, she took the bold step of having herself legally excluded from her state's Indian casinos (Exhibit 6). By doing so, she risked arrest if she was caught in a casino. Unfortunately, applicant has gambled in one or more Indian casinos since she had herself excluded, the last time in May 2005. Applicant testified that she "will do [her] best" not to gamble anymore, but she cannot

promise that she won't (TR at 41). She last received counseling in 2004. Applicant is an honest person, and her testimony regarding her gambling and finances was credible and worthy of belief.

CONCLUSIONS

Applicant's gambling addiction in the late 1990s forced her to file bankruptcy in 1998. Despite receiving a Discharge from the Bankruptcy Court in 2002, which in effect gave her a "fresh start," applicant was forced to file a second

Chapter 13 bankruptcy in early 2004. This second bankruptcy, like the first, was the end result of applicant's excessive gambling. 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*) of the Financial Considerations guideline are applicable.

Applicant does not qualify for any Mitigating Conditions. Mitigating Condition E2.A6.1.3.3 (*the conditions that resulted in the behavior were largely beyond the person's control*) does not apply because her gambling was not beyond her control. And, Mitigating Condition E2.A6.1.3.6 (*the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does not apply because in this case, filing Bankruptcy, although certainly legal, does not constitute a good-faith effort to resolve debts.

Although applicant has not gambled since May 2005, and she testified credibly that she will do her best not to gamble in the future, she candidly admits that she can't promise she won't gamble. However, even if it is assumed that her gambling days are behind her, the evidence falls far short of establishing that she is now financially stable and likely to remain that way. Rather, the evidence establishes that she is still financially overextended, and as such, her situation fits squarely within the Financial Guideline Concern expressed in the Directive (E2.A6.1.1.1 - *An individual who is financial overextended is at risk of having to engage in illegal acts to generate funds.*) Based on this fact, I have no choice but to conclude it is not now clearly consistent with the national interest for applicant to have access to classified information.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST THE 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 applicant.

Joseph Testan
Administrative Judge