

DATE: January 23, 2007

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-02461

## **DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Braden M. Murphy, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant has a history of financial delinquency caused in large part by extensive gambling since 1969. He has paid off about \$32,000 in debt through a Chapter 13 bankruptcy, but owes delinquent credit card debt of about \$5,285 and personal loans totaling about \$47,000 from friends and relatives borrowed to repay gambling debts. Applicant also falsified a travel voucher at work in 1988 to obtain a cash advance to pay a gambling debt. Financial Considerations and Personal Conduct concerns are not mitigated where delinquent debts are unresolved and he continues to gamble. Clearance is denied.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on September 28, 2005, detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR on October 25, 2000, and requested a decision based on the written record.

On March 16, 2006, Applicant requested a hearing, and the case was assigned to me on April 10, 2006. Pursuant to notice dated June 12, 2006, a hearing was convened on June 27, 2006, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Seven government exhibits (Ex. 1-7) were admitted and Applicant testified, as reflected in a transcript (Tr.) received July 17, 2006.

### **FINDINGS OF FACT**

DOHA alleged under Guideline F ( Financial Considerations) that Applicant owes charged off credit card debt totaling \$4,420 (¶¶ 1.a, 1.b, and 1.c), an unpaid judgment debt of \$2,406 (¶1.d), personal loans from friends totaling \$13,000 (¶ 1.e), and personal loans from relatives totaling \$34,000 (¶ 1.f); that he petitioned for Chapter 13 bankruptcy in February

2001 because of gambling activities (¶ 1.g); that he falsified a travel voucher in August or September 1988 to pay a bookie and was forced to resign from his job as a result (¶ 1.h); that he incurred about \$120,000 in gambling losses between 1984 and 1987 (¶ 1.i); and that he gambled from 1969 to at least June 2004, including after he filed for bankruptcy (¶ 1.j). The alleged falsification of the travel voucher, gambling losses, and gambling activities from 1969 to at least June 2004, were also cross-alleged under Guideline E, Personal Conduct (¶ 2.a).

Applicant admitted he had been indebted as alleged, but indicated the judgment debt had been paid through the bankruptcy, he had arranged to repay his consumer credit debt, and he and his friends and relatives had mutually agreed on when he would repay the funds he borrowed from them. Applicant also acknowledged he had lost some \$120,000 gambling between 1984 and 1987, had falsified the travel voucher, and had continued to gamble after his bankruptcy filing. He denied that his conduct raised Personal Conduct concerns, and cited as evidence of his trustworthiness his part-time employment as a security guard for the state bureau of investigation for the past three years.

Applicant's admissions to the indebtedness and gambling activities are incorporated as findings of fact. After a thorough review and consideration of the evidence of record, I make the following additional findings of fact:

Applicant is a 59-year-old senior project technical analyst/specialist in a defense contractor's life cycle support department. Applicant worked for the company from April 1974, with a secret clearance, from 1975 until about October 1988, when he was forced to resign after falsifying a travel voucher to obtain a cash advance for gambling. He was rehired about 15 months later. On April 26, 1991, he was granted a secret clearance which he now seeks to retain.

Applicant attended college from September 1965 to May 1971. He began gambling while in college, betting between \$30 and \$40 at racetracks twice monthly. After he earned his bachelor of science degree, he served in the U.S. Army National Guard until 1977, including for three years after he started working for his current employer.

His gambling increased over the years to where, by 1984, it was almost daily. From 1984 to 1987, he placed bets on baseball games with bookies, gambling about \$300 per occasion. His salary of about \$32,000 annually was not sufficient to support his gambling activities during this period, and he began to take cash advances from credit cards. He continued to gamble despite heavy losses, which totaled about \$120,000 between 1984 and 1987. For about 12 months starting in 1987, he paid a bookie \$400 per week in interest on funds borrowed to gamble.

Needing money to pay a gambling debt, Applicant in August or September 1988 submitted a travel voucher at work claiming a cash advance of \$950 for a trip he did not intend to take. He forged his director's signature on the voucher. After he got the funds, he told his supervisor what he had done and was given the option of resigning in lieu of being fired. When he left the employ of the defense contractor in October 1988, he received \$25,000 from his stock savings plan that he used to repay his creditors. He also borrowed \$75,000 to \$80,000 from his father, to repay his debts, which included cash advances in excess of \$29,000 and bank loans taken out to gamble. Most of his debts were paid in full or settled in February 1989. Applicant made payments of \$80 per month on \$7,000 in loans owed to a bank.

In January 1989, Applicant began outpatient counseling with a therapist for this gambling. He attended ten sessions and one session of Gamblers Anonymous. Employed by a moving company at that time, Applicant limited his gambling to off-track betting once in awhile.

On October 3, 1990, Applicant was interviewed by a special agent of the Defense Security Service (DSS) about his gambling and related financial difficulties as well as his termination from his defense contractor employment in 1988. Applicant detailed his gambling activities but indicated that most of his debts had been paid with stock savings and loans from family members. He denied any gambling since 1987 and any intent of gambling in the future. Applicant estimated a net monthly remainder of \$290 which he indicated was sufficient to meet his expenses in a timely manner.

Applicant resumed gambling in about 1991, shortly after he was rehired by his current employer. He played blackjack at a casino that had recently opened in his area and engaged in some off-track betting. With college costs for his children and his gambling, Applicant again began to fall behind in his obligations. In 1999 or 2000, when his annual income was in excess of \$41,000, Applicant borrowed \$9,000 from one friend and \$4,000 from another to cover his expenses. He also borrowed \$29,000 from his sister, and \$5,000 from his brother, which went to pay off a bank loan. In September 2000, Applicant and his spouse divorced after 29 years of marriage, in part because of his continued gambling. He went

to the casino if he had a few dollars to bet, and bet more if he won money. There was no set limit to his gambling. Applicant did not pay his lawyer for services rendered, and the attorney obtained a judgment against him in the amount of \$2,406 on November 16, 2000.

About \$50,000 in debt because of gambling, and in arrears on his mortgage, Applicant filed a Chapter 13 bankruptcy petition on February 15, 2001. He listed unsecured priority claims of \$8,525 (unpaid federal and state income taxes and municipal real estate and use taxes) and nonpriority claims of \$8,975 (a \$1,500 fuel oil debt, \$750 for legal services owed to his ex-wife's attorney, \$1,500 in property settlement to his ex-wife, \$2,400 to his divorce lawyer, \$1,225 in revolving credit card debt, and a \$1,600 deficiency balance following a vehicle repossession). Applicant did not report any gambling losses. On April 18, 2001, the bankruptcy court ordered \$131 per week be deducted from Applicant's pay for 260 weeks under the bankruptcy plan. In 2001 or 2002, Applicant began working a second job part-time as a security guard.

In July 2002, Applicant sold his home to the friend from whom he had borrowed the \$9,000. Applicant stayed in the residence at a rent of \$1,000 per month. On May 12, 2003, Applicant executed a security clearance application (SF 86), listing his bankruptcy.

On June 28, 2004, Applicant was interviewed by a contract investigator for the Defense Security Service. Applicant attributed his bankruptcy to his gambling, which he indicated started in 1998. Applicant averred that \$131 was still being deducted from his pay weekly under the bankruptcy plan, and he owed about \$4,300 total on five MasterCard accounts, \$250 on a personal loan with a credit union, and \$15,000 in student loans for his son on which he was making \$200 monthly payments. He related he was paying \$100 to his daughter for \$5,000 in cash advances from her credit card taken on his behalf in about \$2,000. Applicant also acknowledged he had borrowed \$29,000 from his sister (\$10,000 of which was paid to his spouse in their divorce), \$5,000 from his brother, \$9,000 from his landlord/friend, and \$4,000 from another friend, but that they were not demanding repayment. He added he had "curtailed [his] gambling activity substantially" since filing for bankruptcy, and described his current gambling as once or twice per week at the casino, with net betting outlays of cash about \$100 per visit. Applicant indicated he had about \$162 remaining each month because of his second job and overtime with the defense contractor.

A check of Applicant's credit on August 15, 2005, revealed that Applicant was past due \$929 on a MasterCard account that had been charged off in about March 2004 (¶ 1.a). A second MasterCard account, charged off in about June 2004, was past due \$1,676 (¶ 1.b). Yet a third MasterCard account had been charged off with \$1,815 past due (¶ 1.c). His credit report did not reflect satisfaction of the judgment debt owed his bankruptcy lawyer (¶ 1.d), although he was paying it back through the bankruptcy.

On September 28, 2005, Applicant was placed on notice with the issuance of the SOR that his gambling activities, his delinquent consumer credit debts, and unpaid personal loans were of concern to the Department of Defense. He continued to frequent the casino about twice per week, against the advice of family members, but did not gamble every time. In November 2005, Applicant took out a \$18,879 automobile loan to be repaid at \$393 per month. The next month, his overtime ended at work. In December 2005, Applicant cashed checks totaling \$500 at the casino. He spent about \$120 of the money gambling. He did not know that his overtime was about to end when he bought the car. In January 2006, he moved to lower his rent. In May 2006, he made his last payment of \$131 under the bankruptcy.

A check of Applicant's credit on June 20, 2006, revealed another MasterCard account had been charged off in April 2006, when it became past due with a \$1,558 balance (not alleged), and that Applicant also owed unpaid delinquent credit card balances of \$904 (¶ 1.a), \$1,626 (¶ 1.b), and \$1,197 (¶ 1.c). A past due telephone debt of \$92 had been placed for collection in October 2005. He had been late on his automobile loan in early 2006, although the loan had since been brought current.

Something has always come up (car repairs, his son needed money) that has prevented him from paying on his delinquent consumer credit card debts.

As of late June 2006, Applicant owed his former landlord/friend \$1,000 in back rent. With little to no opportunity for overtime, his annual earnings at the defense contractor job were \$45,000. He continued to supplement his income by working as a part-time security officer, taking home about \$130 per week from that job. Living from paycheck to

paycheck, Applicant had a negative balance in his checking account (-\$19) and \$15 in savings. He feels no pressure to pay back his siblings. He has made some payment of the loans extended to him by his friends. He owes \$3,900 of the original \$4,000 and \$8,300 of the \$9,000 loan. When he turns 59 1/2, he plans to withdraw his \$20,000 in stock savings at work and pay off his friends. Applicant owes back federal taxes of about \$9,000 for 2003 and 2004, and \$600 to \$700 to the state. Applicant has continued to go to the casino with varying frequency that averages out to twice per week. Especially during the summer when he coaches softball, he might not go for a couple of weeks. Other times, he will frequent the casino three or four days in a row. He still loses "a few dollars" (Tr. 128), and has lost about \$2,500 in a year's time of late. Family members have advised him to stay away from the casino.

## 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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

The Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

## CONCLUSIONS

### **Guideline F--Financial Considerations**

Under Guideline F, an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (¶ E2.A6.1.1) Applicant has a history of financial problems since the latter half of the 1980s, when he had to borrow \$75,000 to \$80,000 from his father and falsified a travel voucher at work for a cash advance to pay off gambling debt. While he paid off many of his debts in February 1989, he had to borrow \$34,000 from his siblings and \$13,000 from friends in 1999/00 to cover subsequent obligations, including an installment loan with a bank. As of his February 2001 bankruptcy filing, he owed about \$50,000 in gambling debt, was in arrears on his mortgage, and had not paid his divorce attorney. Although he satisfied the mortgage arrearage on the sale of his home, and paid \$34,000 to his creditors in the bankruptcy, he fell delinquent on some MasterCard accounts opened after he filed for bankruptcy (¶¶ 1.a., 1.b, 1.c, and a fourth debt of \$1,558 not alleged). He also owes delinquent taxes. He has not satisfied the personal loans borrowed from his friends and relatives. Several disqualifying conditions (DC) are implicated: ¶ E2.A6.1.2.1. *A history of not meeting financial obligations*; ¶ E2. A6.1.2.2. *Deceptive or illegal financial practice such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust*; ¶ 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*.

Mitigating condition (MC) ¶ E2.A6.1.3.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, applies because of his Chapter 13 bankruptcy with weekly payments under the wage earner plan. Favorable findings are returned as to SOR ¶¶ 1.g and 1.d because of the satisfaction in bankruptcy. Furthermore, the loss of available overtime since December 2005 is an unexpected circumstance that has recently negatively affected his finances. However, neither MC ¶ E2.A6.1.3.3. *The conditions that resulted in the behavior were largely beyond the person's control*, nor MC ¶ E2.A6.1.3.6 adequately address the gambling, which caused much of his financial difficulty. While he received counseling in 1989 for his gambling, MC ¶ E2.A6.1.3.4. requires, in addition to counseling, clear

indication that the problem is being resolved or is under control. Although his gambling losses have not approached the \$120,000 of the 1980s, he continues to frequent casinos on average twice weekly. While he does not always gamble, he has incurred gambling losses of about \$2,500 in a year's time of late. (Tr. 116) Whether Applicant spends \$10 or "a couple hundred" gambling (Tr. 125), he shows poor financial judgment in not using those funds to pay off his creditors. Future serious financial difficulties cannot be ruled out where he intends to continue to gamble despite a history of gambling losses ("once in a while I've won, but, you know, nothing, nothing major or that would, you know, help me pay off something." Tr. 125) and he lives from paycheck to paycheck.

### **Guideline E--Personal Conduct**

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. (¶ E2.A5.1.1) Applicant exercised poor judgment within the context of Guideline E by gambling despite losses totaling more than three times his annual salary, and continuing to gamble after he filed for bankruptcy in February 2001. He exhibited dishonesty by submitting in August or September 1988 a false travel claim to his employer to obtain a cash advance of about \$950 to repay a bookie. Under Guideline E, DC ¶ E2.A5.1.2.1. *Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*, is potentially applicable to such adverse employment information, although it is not clear whether the DSS learned from Applicant's employer or only from Applicant that he had been forced to resign from his employment because of his fraudulent conduct.

Although none of the Guideline E mitigating conditions are on point, Applicant is credited with coming forward with his employer about the false voucher, albeit after he received the money. There is no evidence of any recurrence of that misconduct, although it continues to raise judgment concerns. Moreover, although it is legal to gamble in casinos, serious security concerns are raised when an individual is unable or unwilling to fulfill other obligations as a result. In this case, Applicant has demonstrated unreliability in his financial affairs because of his gambling. Serious concerns persist about his judgment and reliability where he does not appreciate the risk presented by gambling beyond one's means:

And, you know, I think if I was a person, I was kind a going astray, or whatever, I'd be missing a lotta time at work, which I don't do. I wouldn't be getting involved in our community, which I do all the time, and again, it's just something that happened, you know, I'm not happy about it. It's caused some hardships, but, you know, life goes on, and I'm making every effort to pay out all my debts, and again, the majority of them are credit cards, and you know, hopefully within--my goal is to get them paid off in a couple of years, and then hopefully in another couple of years I'm going to retire. . .

And as far as--again, you know, I'm not really sure what the reason is that I would, you know, be denied this, because I might be tempted to give someone some, you know, information that they shouldn't have. I mean, like I said, it never entered my mind. Never will enter my mind. You know, just I'm not that type of a person. You know, I gamble, and you know, a few things that are associated with gambling, you know, lying here and there, and--but I'm trying to, you know, make good for, you know, what I owe, and basically I mean that's it. (Tr. 32-33)

### **Whole Person Analysis**

"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." (¶ E2.2.1) Applicant's extensive gambling as an adult (¶ E2.2.1.4. *The individual's age and maturity at the time of the conduct*), while legal, led to such financial pressure that he filed a false travel claim at work in 1988 to obtain funds to alleviate his gambling debt (¶ E2.2.1.1. *The nature, extent, and seriousness of the conduct*). While there has been no recurrence of the fraudulent behavior since 1988 (¶ E2.2.1.6. *The presence or absence of rehabilitation and other pertinent behavioral changes*), Applicant has not shown similar reform with respect to his gambling. He intends to continue to frequent a local casino, many times just for dinner but on occasion to gamble, despite the problems his gambling has caused him, and family members' admonitions to stay away from the casino (¶ E2.2.1.9. *The likelihood of continuation or recurrence*). The potential for financial pressures is significant (¶ E2.2.1.8. *The potential for pressure, coercion, exploitation, or duress*) and not overcome by his 30 years of employment with the defense contractor or by his contributions to the community as a local coach.

**FORMAL FINDINGS**

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

**DECISION**

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Elizabeth M. Matchinski

Administrative Judge