

DATE: September 19, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-02557

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 42 years old and works for a federal contractor. Since June 1996, she accumulated a significant amount of debt that she has not paid or resolved, much of it as the result of a gambling addiction. She failed to mitigate the security concerns raised by financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On April 29, 2003, Applicant submitted a security clearance application (SCA). On October 4, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended. The SOR detailed reasons under Guidelines F (Financial Considerations) and E (Personal Conduct) why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On November 15, 2005, Applicant filed her Answer, and elected to have the case decided on the written record in lieu of a hearing. On June 23, 2006, Department Counsel prepared a File of Relevant Material (FORM) containing nine Items, and mailed Applicant a complete copy on June 26, 2006. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on July 10, 2006, and did not submit any additional information. The case was assigned to me on August 29, 2006.

PROCEDURAL ISSUE

On June 26, 2006, Department Counsel filed its Motion to Withdraw Guideline E Allegations in the SOR, to which Applicant did not object. The Motion is granted.

FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in her Answer to the SOR, I make the following findings of fact:

Applicant is 42 years old and divorced. She has two older children. From April 1982 to the present, she has worked for a federal contractor, except for three months in 1996 (June to September) when she was unemployed as a result of a union strike. During that same period of time her nephew moved in with her and she terminated a long term relationship, causing her some financial strain. To alleviate the strain, she began gambling at the local casino. In spring of 1999, her mortgage company notified her that she would lose her house if she did not make her mortgage payments. In December 1999, she filed a petition for bankruptcy under Chapter 13 to preserve her home. After failing to make payments in accordance with the court's reorganization plan, the case was dismissed in October 2000. In July 2000, she moved in with her parents. (Item 6)

In a March 2004 statement to a government investigator, she admitted her gambling habits had not changed since 1996, and she had not sought help for her addiction. "I am acutely aware of the fact that I have a very serious gambling problem that is at the root of my financial problem, but I have chosen to do nothing about it this far." (GX 6 at 2) She acknowledged that she consciously decided not to pay any debts, other than her car loan. (*Id.*) In her November 2005 answer she admitted she owed all monies alleged in the SOR, except for those listed in ¶¶ 1.p (\$1,152) and 1.q (\$1,096), for which she did not provide any evidence to support her assertion and the debts are still owed. (GX 4) All of the debts total more than \$27,000.

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth criteria, which must be evaluated when determining security clearance eligibility. Within those adjudicative guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct an administrative judge should consider: (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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must

include consideration of not only the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive ¶ E2.2.2. The decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty. Exec. Or. 10865, § 7. Instead, it is a determination that an applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *Departments of the Navy v. Egan*, 484 U.S. 518, 531 (1988). The Directive presumes a rational connection between past proven conduct under any disqualifying conditions and an applicant's present security suitability. ISCR Case No. 95-

0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence in refutation, extenuation, or mitigation sufficient to overcome the position of the government. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his clearance." *Id.*

Based upon the allegations contained in the SOR and a consideration of the evidence as a whole, the following adjudicative guideline is pertinent to an evaluation of the facts of this case:

Guideline F - Financial Considerations: A security concern may exist when 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.

The disqualifying and mitigating conditions, raising either security concerns or mitigating security concerns applicable to this case, are set forth and discussed in the Conclusions section below.

CONCLUSIONS

I considered all the facts in evidence and legal standards, including the "whole person" concept. The Government established a potential case for disqualification under Guideline F.

Based on the evidence, three Financial Consideration Disqualifying Conditions (FC DC) apply: (1) FC DC E2.A6.1.2.1 (*A history of not meeting financial obligations*); (2) FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*), and (3) FC DC E.2.A6.1.2.5 (*Financial problems that are linked to gambling, drug abuse, alcoholism, or other issues of security concern*). Since 1996, Applicant has a history of failing to meet her financial obligations as evidenced by her admissions, credit reports, and gambling addiction.

The Government having established its case, the burden shifted to Applicant to mitigate or rebut the allegations. After reviewing all of the mitigating conditions, I conclude none apply. Applicant's financial problems are current and ongoing, such that they cannot be mitigated under FC MC E2.A6.1.3.1 (*The behavior was not recent*), or FC MC E2.A6.1.3.2 (*It was an isolated incident*). Because she has made a conscious decision to continue gambling and not pay her bills over the last ten years, FC MC E2.A6.1.3.3 (*The conditions that resulted in the behavior were largely beyond the person's control*), and 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*), cannot apply. There is no evidence that she has resolved any of the delinquent debts listed in the SOR, which excludes mitigation under FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Hence, all allegations are decided against her.

In addition to the enumerated disqualifying and mitigating conditions under the guideline, I considered the evidence in the context of the whole person, including Applicant's age, work history, and specifically her candid decision to gamble rather than seek help for her addiction over the last ten years. Accordingly, Applicant did not mitigate the security concerns raised by financial considerations and Guideline F is decided against her.

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 (Financial Considerations) AGAINST APPLICANT

Subparagraphs 1.a through 1.q: Against Applicant

DECISION

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

Shari Dam

Administrative Judge