



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
)  
) ISCR Case No. 08-02550  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Brandon M. Murphy, Esquire, Department Counsel  
For Applicant: Rebecca L. Marquez, Esquire

January 14, 2009

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**Decision**

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RIVERA, Juan J., Administrative Judge:

Applicant failed to mitigate the security concerns arising from financial considerations and personal conduct. He falsified his security clearance application. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted security clearance applications on September 24, 2002 (Standard Form (SF) 86) (GE 1); August 5, 2003 (Questionnaire for National Security Positions) (GE 3); August 29, 2003 (SF 86) (GE 4); and September 6, 2006 (Questionnaire for National Security Positions) (GE 9). On July 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the Government's security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).<sup>1</sup>

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<sup>1</sup> The action was taken under Executive Order 10865, Safeguarding Classified Information within Industry (February 20, 1960), as amended; Department of Defense Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive), and the

Applicant answered the SOR on August 28, 2008, and requested a hearing before an Administrative Judge. The case was assigned to me on October 31, 2008. DOHA issued a notice of hearing on November 5, 2008. I convened the hearing as scheduled on November 24, 2008. The government offered exhibits (GE) 1 through 14, which were received without objection (Tr. 25). Applicant testified on his own behalf and submitted exhibits (AE) 1 and 2, which were received without objection. I kept the record open to allow Applicant time to submit additional matters in support of his case. He submitted AE 3 post-hearing. DOHA received the transcript of the hearing (Tr.) on December 2, 2008.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.c, 1.j, and 1.k (some with explanations). He denied the allegations in SOR ¶¶ 1.d through 1.i, and 2.a. After a thorough review of all evidence of record, including his demeanor and testimony, I make the following findings of fact.

Applicant is a 58-year-old contracts manager (Tr. 45). He completed his associate's degree in 1976, and has taken additional college courses over the years (Tr. 45). He served honorably in the U.S. Air Force (10 years) and his state's Air National Guard from 1968 to 1990. He retired at the rank of E-7 from the Air National Guard (Tr. 47).

Applicant has had continued access to classified information from 1968 to March 2008 (Tr. 46-51). He received access to classified information at the secret level from around 1968 to 1978 while serving in the Air Force. From 1978 to 1990, he served in the Air National Guard where he also held access to classified information. In 1988, his secret access was upgraded to a top secret clearance, and that access continued until he retired from the service in 1990 (Tr. 48). Because of his employment for government contractors, Applicant also had access to classified information, through different government agencies, at the secret and top secret levels concurrent with his military access.

In August 2002, he was hired by his current employer, a government contractor. His supervisor over the past six years considers Applicant to be extremely reliable and honest. In his opinion, Applicant has demonstrated integrity and professionalism at work, and earned the respect of co-workers and managers within the company. He considers Applicant to be trustworthy and recommended his continued access to classified information (AE 2).

Since 1968, Applicant submitted many security clearance applications, both for his military and civilian job positions (Tr. 64). He was very familiar with the security

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revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

clearance application process. His Department of Defense access to classified information was suspended in March 2008 as a result of a decision by another government agency to deny his access to sensitive compartmented information (Appellate Exhibit 1).

Applicant married his first wife in 1971 and they were divorced in 1979. He married his current wife in April 1980 (Tr. 83). He has three grown children: two daughters ages 27 and 20, and a son age 25 (Tr. 52).

Applicant testified he started gambling around 1996-1997 (Tr. 54). In 1998, his past time became an addiction and he developed into a compulsive gambler. His earnings and credit cards were not sufficient to support his gambling habit (Tr. 54-55). In 1999, Applicant became the treasurer of a large sports club. Between 1999 and September 2003, Applicant embezzled \$114,000 from his club to support his extensive gambling habit and expenses (Tr. 56). In September 2003, he disclosed his embezzlement to the club's attorney. Shortly thereafter, Applicant made an equity loan and borrowed money from relatives to make three lump sum payments to the club totaling \$75,000 (Tr. 34, 60). In March 2004, Applicant signed a promissory note agreeing to pay the remaining \$39,000. He paid the money ahead of schedule and his promissory note was released in January 2006 (GE 14, Tr. 36, 58-61). Applicant disclosed his gambling problems to his wife and close family members.

Because of his remorse and guilt over his gambling habit and embezzlement, Applicant became depressed. He was diagnosed with Major Depressive Disorder, Single Episode, Severe Without Psychotic Features (AE 3). He underwent professional psychological counseling/treatment from October 2003 to April 2005 and received anti-depression medication (Tr. 38-41). His depression is currently under control and he no longer takes medications. At his hearing, Applicant described himself as a recovering compulsive gambler, but averred he no longer has the urge to gamble (Tr. 42). On July 12, 2005, during a security clearance interview conducted by another government agency, Applicant stated that his then gambling activity was limited to a scratch off ticket per month (GE 5).

Applicant has been regularly attending Gambler's Anonymous (GA) since October 2003 to the day of his hearing. He has actively participated in GA's activities, and has held positions of responsibility in the local GA group, including service as secretary and twice as treasurer. He also served as treasurer for the state organization that oversees and guides all GA's groups within his state (Tr. 42-44). According to the Chairman of his state's Intergroup of Gamblers Anonymous, Applicant has earned the respect and trust of his peers with his excellent performance, work ethics, and dependability. He has achieved outstanding improvements in his character and commitment to excellence (AE 1).

Applicant smoked marijuana in late 2002 at the age of 52 (Tr. 40-41). He explained that he and a group of co-workers who like to play musical instruments got together to play music around the 2002 Christmas Holidays. During the evening, a co-

worker lit a marijuana cigarette that was circulated around the group. Applicant smoked and passed the marijuana cigarette around his circle of friends several times (GEs 6 and 11).

Applicant claimed that his last use of marijuana was in 2002 (Tr. 62-63). Prior to 2002, his last use of marijuana was in 1987. Applicant knew that marijuana is a controlled substance, and that possession and use of marijuana is illegal. Both times Applicant used marijuana he had access to classified information.

In September 2002, Applicant submitted a security clearance application (GE 1). In response to question 28 (asking whether he had ever illegally used a controlled substance while possessing a security clearance), Applicant deliberately answered “No” and failed to disclose his 1987 marijuana and cocaine use.<sup>2</sup>

On August 5 and 29 of 2003, Applicant submitted two additional security clearance applications (GEs 3 and 4). In response to questions 24.a of the August 5, 2003 SF 86, and question 27 of the August 29, 2003 SF 86 (both asking whether in the last seven years he had illegally used any controlled substance), Applicant deliberately answered “No” and failed to disclose his 2002 marijuana use.<sup>3</sup> In his response to question 24.b of the August 5, 2003 SF 86, and question 28 of the August 29, 2003 SF 86 (both asking whether he had ever illegally used a controlled substance while possessing a security clearance), Applicant deliberately answered “No” and failed to disclose his 1987 cocaine use and his 2002 marijuana use.

In September 2006, Applicant submitted a fourth security clearance application (GE 9). In response to questions 24.a (asking whether in the last seven years he had illegally used any controlled substance), Applicant answered “Yes;” however, he failed to disclose the month/year, drug used, and the number of times used. In his response to question 24.b (asking whether he had ever illegally used a controlled substance while possessing a security clearance), Applicant deliberately answered “No” and failed to disclose his 1987 cocaine use and his 2002 marijuana use.

Applicant claimed his failure to disclose his marijuana use in his August 29, 2003 SF 86 was not deliberate or with the intent to mislead the government. He explained the

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<sup>2</sup> On July 2, 2004, during a security clearance interview conducted by another government agency, Applicant provided the following information concerning his past use of illegal drugs: in 2002 he used marijuana at a friend’s house; in 1987 he snorted cocaine; between 1978 and 1979, he used marijuana twice while in the Air National Guard; between 1972 and 1974, while serving in the Air Force, he used marijuana on two separate occasions while holding a security clearance; between 1969 and 1972, while serving in the Air Force (stationed in Germany) and holding a secret clearance, he used hashish one time per week. He contributed money to the purchase of hashish, and purchased hashish himself twice (GEs 5 and 13). Applicant failed to disclose this information in his subsequent security clearance applications.

<sup>3</sup> His falsification of the August 29, 2003 SF 86, is the only falsification alleged in the SOR concerning Applicant’s illegal drug use or drug activity. Specifically, SOR ¶ 1.f only lists his failure to disclose his 2002 marijuana use. All other falsification allegations concern his alleged failure to disclose financial information.

he did not recall his past use of marijuana when he submitted his SF 86 (Tr. 68). At the time, he was suffering from depression and taking anti-depression medication (Tr. 37-41). He further explained: "It was to me such a simple casual thing in the setting that I was in. I more than likely didn't even think of it" (Tr. 66).

In his answers to the four SF 86 financial questions concerning financial delinquencies (asking whether during the last seven years he had been over 180 days delinquent on any debts, and whether he was currently over 90 days delinquent on any debts), Applicant did not disclose his \$114,000 embezzlement debt. Applicant admitted that he embezzled the money and owed the debt, but that he was never delinquent on his repayments to the club. The SOR did not allege any other delinquent debts that the Applicant failed to disclose.

Applicant was denied eligibility for access to sensitive compartmented information by two other government agencies in 2005 and 2007. Both denials were based, in part, on the same questionable behavior alleged in the pending SOR.

### **Policies**

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.<sup>4</sup>

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's controlling adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."<sup>5</sup> In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on

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<sup>4</sup> See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>5</sup> *Egan, supra*, at 528, 531.

the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline E, Personal Conduct**

Under Guideline E, the security concern is that conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. AG ¶ 15.

Between 1997 and September 2003, Applicant developed into a compulsive gambler and embezzled \$114,000 from a club in which he held a position of trust. He stole the money to support his extensive gambling habit and expenses. He continued gambling (playing scratch off tickets) until at least January 2005.

Applicant deliberately falsified his August 29, 2003 security clearance application when he failed to disclose his 2002 marijuana use.

Applicant claimed his falsification of the August 29, 2003 was not deliberate or with the intent to mislead the government. He claimed he did not recall his 2002 use of marijuana when he submitted his SF 86. He explained that at the time, he was suffering

from depression and taking medications. Considering Applicant's testimony in light of extensive and detailed record evidence, I find his testimony was less than candid.

Applicant falsified his September 2002 security clearance application<sup>6</sup> when he failed to disclose that his 1987 marijuana and cocaine use while possessing a security clearance. He falsified his August 5, 2003 security clearance application when he failed to disclose that within the last seven years (in 2002) he had illegally used marijuana. He also falsified his answers to question 24.b of the August 5, 2003 SF 86, and question 28 of the August 29, 2003 SF 86 (both asking whether he had ever illegally used a controlled substance while possessing a security clearance), when he deliberately answered "No" and failed to disclose his 1987 cocaine use, and his 2002 marijuana use.

He further falsified his September 2006 security clearance application when he answered "No" to question 24.b (asking whether he had ever illegally used a controlled substance while possessing a security clearance), and deliberately failed to disclose his 1987 cocaine use, and his 2002 marijuana use.

Considering the record as a whole, I am convinced Applicant deliberately failed to disclose the information. Numerous factors weighed in my analysis to reach that conclusion, including: Applicant's statements to other government agencies, his maturity (both at the time of the illegal drug use and when he submitted his security clearance applications), his service and employment history, his demeanor and testimony, and the lack of credibility of his explanations.

Because of his extensive experience in the Air Force, the Air National Guard, holding a security clearance, and with the security clearance process, Applicant knew the importance of accurately completing his security clearance application and telling the truth. Nevertheless, he failed to provide information that was material to making an informed security decision and made false statements. AG ¶ 16(a) "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire," applies.

SOR ¶¶ 1.d, 1.e and 1.g – 1.i, alleged Applicant falsified his September 24, 2002, August 29, 2003, and September 6, 2006 security clearance applications, because he failed to list his \$114,000 embezzlement debt in his answers to the three SF 86 financial questions concerning financial delinquencies. In its pertinent parts, the financial questions asked whether during the last seven years Applicant had been over 180 days delinquent on any debts, and whether he was currently over 90 days delinquent on any

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<sup>6</sup> The Government did not allege the falsifications of the questions concerning Applicant's use of illegal drugs and drug activity in his security clearance applications from September 2 and September 24, 2002, August 5, 2003, and September 6, 2006. Thus, the falsification of these security clearance applications cannot be used as grounds to deny Applicant's application under Guideline E. However, I am required to consider Applicant's overall questionable behavior when evaluating the seriousness of the conduct alleged in the SOR to determine factors such as the extent to which his behavior is recent; the likelihood of recurrence; his credibility, i.e., Applicant's explanations concerning the circumstances of the incidents alleged; and his rehabilitation. ISCR Case No. 04-09959 at 3 (App. Bd. May 19, 2006).

debt. The Government's evidence failed to establish Applicant was ever late or delinquent on his payments.

Applicant stole the \$114,000 and acquired a legal obligation to return the money. After confessing his embezzlement, Applicant shortly thereafter paid \$75,000 in three lump sum payments and signed a promissory note for the remainder of the debt, which he timely paid.

AG ¶ 17 lists seven conditions that could mitigate the personal conduct security concerns. After considering all the mitigating conditions, I find none of the mitigating conditions apply to this case. Applicant's behavior shows a recurrent pattern of falsifications (AG ¶ 17(a) does not apply). His falsification of the security clearance application is a serious offense, his behavior is recent, and it shows Applicant's lack of reliability, trustworthiness, and judgment. (AG ¶ 17(c) does not apply).

### **Guideline F, Financial Considerations**

Under Guideline F, the security concern is that an Applicant's failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. AG ¶ 18.

Applicant's compulsive gambling habit led him to embezzle \$114,000 from a club in which he held a position of trust. He stole the money to support his extensive gambling habit and expenses. He continued gambling (playing scratch off tickets) until at least January 2005.

Applicant's behavior triggers the applicability of the following disqualifying conditions under AG ¶ 19:

(d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;

(f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern; and

(i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.



AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(f) the affluence resulted from a legal source of income.

I find Applicant's questionable behavior to be relatively recent. He gambled from 1997 to at least 2005, and his embezzlement took place from around 1998 to 2003, thus, it was not infrequent.

Applicant's GA sponsor and psychologist believe he is doing well, and that he overcame his depression and gambling habit. Notwithstanding, the record shows Applicant gambled at least until 2005. Because Applicant was diagnosed as a compulsive gambler and he has continued to gamble until at least 2005 (albeit by purchasing scratch off tickets), I am not convinced that the circumstances that led to his gambling habit and embezzlement are not likely to recur. AG ¶¶ 20(a) and (c) do not apply. AG ¶ 20 (d) applies because Applicant took immediate action to repay his obligation. However, financial considerations remain a security concern because his financial concerns are directly linked to his compulsive gambling habit. Applicant has continued gambling at least until 2005. As such, I consider his behavior recent, likely to recur, and it cast doubt on Applicant's current reliability, trustworthiness, and judgment.

### **Whole Person Concept**

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's

conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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 individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature, educated, and well trained man. He honorably served 22 years in the Air Force and Air National Guard, and has been successful working for numerous defense contractors for many years. He has held access to classified information at the secret and top secret level for approximately 40 years.

Because of his years in the service and his many years holding access to classified information, Applicant knew or should have known the importance of the trust placed on him by the Government. He used illegal drugs in numerous occasions while holding access to classified information and violated the trust placed on him when he embezzled money to support his extensive gambling habit. Moreover, he failed to be candid and honest on his security clearance application and during his testimony at hearing. His behavior shows he lacks judgment, reliability, and trustworthiness.

Overall, the record evidence fails to convince me of Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial considerations and personal conduct security concerns.

### **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 E:	AGAINST APPLICANT
Subparagraphs 1.a - 1.c, and 1.f:	Against Applicant
Subparagraphs 1.d, 1.e, 1.g - 1.k :	For Applicant

Paragraph 2, Guideline F:

AGAINST APPLICANT

Subparagraph 2.a:

Against Applicant

**Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to continue Applicant's security clearance. Eligibility for access to classified information is denied.

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JUAN J. RIVERA  
Administrative Judge