



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



In the matter of:)
)
-----) ISCR Case No. 08-07680
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Gina Marine, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

August 9, 2010

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding the personal conduct and financial considerations. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On March 25, 2004, Applicant applied for a security clearance and submitted an ESPQ version of a Security Clearance Application (SF 86).¹ On an unspecified date in 2009, the Defense Office of Hearings and Appeals (DOHA) furnished him a set of interrogatories pertaining to his financial situation. He responded to the interrogatories on August 25, 2009.² On September 23, 2009, DOHA issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and *Adjudicative Guidelines*

¹ Government Exhibit 1 (SF 86), dated March 25, 2004.

² Government Exhibit 3 (Applicant's Answers to Interrogatories, dated August 25, 2009).

for Determining Eligibility For Access to Classified Information (effective within the Department of Defense on September 1, 2006) (hereinafter AG). The SOR alleged security concerns under Guidelines E (Personal Conduct) and F (Financial Considerations). It detailed reasons why DOHA could not make a 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 a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on October 9, 2009. In a sworn, written statement, dated October 19, 2009, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on December 14, 2009, and the case was assigned to Administrative Judge Thomas Crean on January 14, 2010. It was reassigned to me on March 4, 2010, due to Applicant's deployment to Haiti and anticipated unavailability until June 2011. He returned earlier than initially expected. A Notice of Hearing was issued on March 18, 2010, and I convened the hearing, as scheduled, on April 22, 2010.

During the hearing, 8 Government exhibits and 13 Applicant exhibits were admitted into evidence, without objection. Applicant testified. The transcript (Tr.) was received on May 5, 2010.

Findings of Fact

In his Answer to the SOR, Applicant admitted one of the Guideline F factual allegations (§ 2.c.), denied the Guideline E factual allegation (§ 1.a.), and two of the Guideline F factual allegations (§§ 2.a. and 2.b.).

Applicant is a 54-year-old employee of a defense contractor, currently serving as a network engineer,³ and he is seeking to retain a security clearance. He had previously been granted a TOP SECRET security clearance.⁴ Applicant was born in Vietnam in 1956,⁵ escaped by boat to the Philippines,⁶ resided in a refugee camp in the Philippines,⁷ and in 1981, immigrated to the United States.⁸ He earned a Bachelor of Science degree in electrical engineering in June 1986.⁹ He became a naturalized U.S.

³ Tr. at 59-60.

⁴ *Id.* at 21. Applicant contended he has held a security clearance of an unspecified level since 1990, and a TOP SECRET security clearance since March 1993. See Government Exhibit 2 (Personal Security Questionnaire (DD Form 398), dated August 27, 1993, at 4.

⁵ Government Exhibit 1, *supra* note 1, at 1.

⁶ Tr. at 58.

⁷ *Id.*

⁸ *Id.*

⁹ Government Exhibit 1, *supra* note 1, at 1; Government Exhibit 2, *supra* note 4, at 2.

citizen in September 1986.¹⁰ From August 1981 until December 1996, when he commenced his current employment with the defense contractor, Applicant was employed by a number of employers in a variety of positions.¹¹ Applicant indicated on various home loan documents, and his DD Form 398, that he was married,¹² and on his SF 86 that he was “never married.”¹³ While his relationship with the particular woman in question involved residing together from 1983 to 1997, a separation of an unspecified length, and a resumption of the relationship until 2000,¹⁴ as well as two children born to them (daughters born in 1983 and 1986, respectively),¹⁵ in reality, they were never legally married.¹⁶ Applicant married another woman in September 2009.¹⁷

Financial Considerations

There was nothing unusual about Applicant’s finances until about 1994. During the period 1994 through 1997, Applicant and his then live-in girlfriend frequented casinos where they watched musical entertainment and gambled.¹⁸ While he gambled to a limited degree, playing slot machines and roulette, because he did not really enjoy gambling,¹⁹ his girlfriend did it as a hobby, playing blackjack and roulette, and had a serious problem with gambling.²⁰ They were co-applicants on several credit cards and credit lines, and, initially with his acquiescence, those cards and lines were generally used by her to fund her gambling activities.²¹ Transaction Reports by Casino (CTRC) from the Financial Crimes Enforcement Network, indicate seven relatively large transactions involving Applicant.²² On various occasions during that time period, they used funds from his home equity line of credit and credit cards to fund the trips to casinos.²³ They purchased chips or tokens from three different casinos in the following

¹⁰ *Id.* Government Exhibit 1, at 1.

¹¹ *Id.* Government Exhibit 2.

¹² Applicant Exhibit D (Deed, dated April 20, 1987) and (Form HUD-1, dated October 19, 2000); *Id.* at 2.

¹³ Government Exhibit 1, *supra* note 1, at 2.

¹⁴ Tr. at 23.

¹⁵ Government Exhibit 1, *supra* note 1, at 2.

¹⁶ *Id.*

¹⁷ Tr. at 32.

¹⁸ Personal Subject Interview, dated March 2, 2006, attached to Government Exhibit 3, *supra* note 2, at 4-6.

¹⁹ Tr. at 22, 40-41.

²⁰ Personal Subject Interview, *supra* note 18, at 6.

²¹ *Id.* at 4-5; Tr. at 23

²² Government Exhibit 5 (CTRC, dated May 25, 2004).

²³ Personal Subject Interview, *supra* note 18, at 5-6.

amounts: \$10,500;²⁴ \$16,000;²⁵ \$11,100;²⁶ \$10,600;²⁷ \$10,300;²⁸ and \$17,100.²⁹ One CTRC is inconclusive as no specific amount is registered.³⁰ Applicant estimated that during that entire period, his girlfriend may have won a total of \$5,000.³¹

Applicant contends that during some of the casino trips they may not have used all the chips and tokens previously purchased, and some of those chips and tokens were exchanged back into cash to be spent later paying bills.³² At some point in 1996, aware of his mounting bills, Applicant attempted to persuade his girlfriend to give up gambling, but she refused to do so.³³ Unable to keep up with payments because of her gambling activities, and with credit card debt rising to \$40,000,³⁴ accounts became delinquent. The girlfriend moved out of the house in 1997, and about that same time, he met with a bankruptcy attorney. In October 1997, he filed for bankruptcy, and his unsecured debts were discharged under Chapter 7 of the U.S. Bankruptcy Code in January 1998.³⁵

From 1997 until 2006, Applicant continued traveling to casinos for weekends, three times per year,³⁶ primarily to join with friends from the Vietnamese community for fun and to watch musical entertainment.³⁷ He spent approximately \$1,000 on each trip, including travel, lodging, entertainment, and gambling.³⁸

In October 2000, Applicant sold the residence he owned with his girlfriend, and received \$39,075 at settlement.³⁹ Of that amount, pursuant to a previous agreement,

²⁴ Government Exhibit 5, *supra* note 22, at 2.

²⁵ Government Exhibit 5, *supra* note 22, at 3.

²⁶ *Id.* at 4.

²⁷ *Id.* at 5.

²⁸ *Id.* at 7.

²⁹ *Id.* at 8.

³⁰ *Id.* at 6.

³¹ Personal Subject Interview, *supra* note 18, at 5.

³² *Id.* at 5-6.

³³ *Id.* at 6; Tr. at 23.

³⁴ *Id.* Personal Subject Interview, at 4.

³⁵ Government Exhibit 7 (Combined Equifax, TransUnion, and Experian Credit Report), dated January 31, 2007), at 5.

³⁶ Personal Subject Interview, *supra* note 18, at 6.

³⁷ Tr. at 24, 42-43.

³⁸ *Id.* at 25

³⁹ Applicant Exhibit D (Form HUD-1), *supra* note 12.

Applicant retained \$10,000, and his girlfriend received the remainder,⁴⁰ to take care of their children.⁴¹ In September 2009, he sold a condominium and received \$11,908 at settlement.⁴² Applicant's current financial situation is fully rehabilitated since his bankruptcy. As of April 2010, he had a vested balance of over \$71,600 in one of his 401(k) accounts,⁴³ and over \$101,025 in another one of his 401(k) accounts.⁴⁴ His credit scores, as of March 2010, range between 718 and 739.⁴⁵ Applicant's annual salary is \$85,000.⁴⁶ His salary is sufficient to pay all of his normal monthly expenses.⁴⁷ According to the most recent credit report in evidence, Applicant pays each of his open accounts as agreed.⁴⁸ He has no negative accounts or collections on file.⁴⁹

Personal Conduct

During an interview conducted by an investigator from the Office of Personnel Management (OPM) on March 2, 2006, Applicant was questioned about his gambling activities. It appears that the question was "if he gambles."⁵⁰ He initially denied that he gambles, but when shown the CTRC reports, he modified his response.⁵¹ The Government contends his initial response constituted providing false information during the security clearance process. Applicant was subsequently asked about his concept of the word "gamble," as well as to describe his actions in the casinos. He believes gambling is to make money.⁵² If you "play a little bit" while hanging out waiting for a show to start, that is not gambling, it is "just for fun."⁵³ He contends his primary purpose was to drive his girlfriend to the casinos and wait for her while she played. Sometimes he would walk outside with his children and go to the boardwalk, and other times he

⁴⁰ Applicant Exhibit D (Agreement, dated August 14, 2000), at 1.

⁴¹ Tr. at 56.

⁴² Applicant Exhibit L (Form HUD-1, dated September 9, 2009), at 1.

⁴³ Applicant Exhibit M (Account Summary, dated April 21, 2010).

⁴⁴ Applicant Exhibit K (Matched Asset Plan, dated April 16, 2010).

⁴⁵ Applicant Exhibit J (Credit Scores Overview, dated March 2010).

⁴⁶ Tr. at 26-27.

⁴⁷ *Id.* at 27.

⁴⁸ Applicant Exhibit E (Equifax Credit Report, dated November 11, 2009), at 1-23.

⁴⁹ *Id.* at 26.

⁵⁰ Personal Subject Interview, *supra* note 18, at 5.

⁵¹ *Id.*

⁵² Tr. at 43.

⁵³ *Id.*

would get something to drink or “just do a slot machine.”⁵⁴ His concept is a bit confused as well as confusing.

Character References

Two of Applicant’s work colleagues, both of whom have known him for over eight years, as well as two other work colleagues, both of whom have known him for less than three years, have characterized him in very favorable terms. Applicant is described as very industrious, trustworthy, honest, dedicated, highly respected, resourceful, creative, and diligent.⁵⁵ In his 2009 annual performance appraisal, his immediate supervisor gave Applicant an overall rating of “meets/occasionally exceeds expectations.”⁵⁶

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”⁵⁷ 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 have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”⁵⁸

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of

⁵⁴ *Id.* at 41.

⁵⁵ Applicant Exhibit A (Character Reference, undated); Applicant Exhibit B (Character Reference, dated November 4, 2009); Applicant Exhibit H (Character Reference, dated April 10, 2010); Applicant Exhibit I (Character Reference, dated April 18, 2010).

⁵⁶ Applicant Exhibit C (2009 Annual Appraisal, dated May 4, 2009), at 5.

⁵⁷ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁵⁸ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”⁵⁹ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.⁶⁰

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 as well. It is because of this special relationship that 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to 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. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”⁶¹

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”⁶² Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. 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. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

⁵⁹ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁶⁰ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁶¹ *Egan*, 484 U.S. at 531

⁶² See Exec. Or. 10865 § 7.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Also, under ¶ 19(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 paying gambling debts, family conflict or other problems caused by gambling," is potentially disqualifying.

As noted above, there was nothing unusual about Applicant's finances until about 1994, when his spouse-like relationship with his girlfriend, the mother of his two daughters, started to encounter difficulties associated with her gambling. As noted above, he gambled to a limited degree, playing slot machines and roulette, because he did not really enjoy gambling, but his girlfriend did it as a hobby, and had a serious problem with gambling. As co-applicants on several credit cards and credit lines, with his acquiescence, she used those cards and lines to fund her gambling activities. Over time, they purchased \$75,600 worth of chips or tokens. Unable to keep up with payments because of her gambling activities, and with credit card debt rising to \$40,000, accounts became delinquent. At about the same time his girlfriend moved out of the house in 1997, he met with a bankruptcy attorney, and in October 1997, he filed for bankruptcy. His unsecured debts were discharged under Chapter 7 of the U.S. Bankruptcy Code in January 1998. AG ¶¶ 19(a) and 19(c) apply. AG ¶ 19(i) only partially applies, for while he did "borrow" money to fund gambling, the gambling was his girlfriend's gambling, not his own, and the compulsion or addictive nature of the gambling was hers and not his. Furthermore, the family conflict was generated not by his gambling, but rather because he could not prevail upon his girlfriend to stop doing so.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Also, under AG ¶ 20(b), financial security concerns may be mitigated where "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." Evidence that "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" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."⁶³

Applicant's previous financial problems commenced in 1994, and ceased in late 1997, with his discharge in bankruptcy. Because he no longer resides with his girlfriend, and has not done so for over 10 years, and is now married to another woman, the circumstances of his girlfriend's gambling compulsion and its impact on his finances are not likely to recur. Likewise, his financial difficulties commenced due to her compulsion and his somewhat irresponsible acquiescence in permitting her to use credit cards and lines of credit, thereby enabling her behavior. Her gambling compulsion was a condition that was largely beyond his control. By attempting to curtail her gambling or use of the credit cards and lines of credit, he eventually acted responsibly under the circumstances. Applicant receives significant application of AG ¶¶ 20(a) and 20(b) for stopping the compulsive gambling of his girlfriend and separating from her.

Likewise, Applicant's actions merit substantial application of AG ¶ 20(b), for while he may not have received counseling for his girlfriend's gambling compulsion, as far as his financial situation is concerned, since the discharge of his unsecured debts in 1997, Applicant's financial situation has improved dramatically to the point where it appears that any former gambling issues are fully resolved. He now is a homeowner with outstanding credit, a continuing good salary, and substantial savings. With his girlfriend's absence, and his efforts to remain debt-free following his 1997 bankruptcy, his financial difficulties have been resolved.⁶⁴

⁶³ The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

⁶⁴ "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)).

AG ¶ 20(d) does not apply because of the Appeal Board's earlier quoted decision that "an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition]."⁶⁵

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(b), "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative," may raise security concerns. Similarly, under AG ¶ 16(e), "personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing. . . ." may raise security concerns.

During his OPM interview on March 2, 2006, Applicant was questioned about his gambling activities, and apparently asked "if he gambles." He initially denied that he did, but when shown the CTRC reports, he modified his response. The Government contends that initial response constituted providing false information during the security clearance process. While Applicant may have initially given a negative response, there is no evidence that his response was a deliberate attempt to provide false or misleading information. Obviously, from a cursory review of the CTRC records, it looks as though Applicant was funding his gambling compulsion and might have been attempting to minimize it. However, upon further examination and consideration, the combination of his girlfriend's gambling compulsion, his minimum participation in gambling, and his apparently somewhat limited English abilities, I can find no evidence of a deliberate falsification. There is only some confusion over the meaning of the word "gambling." I find Applicant's explanations are credible in his denial of deliberate falsification.⁶⁶ AG ¶ 16(b) has not been established.

⁶⁵ See ISCR Case No. 02-30304, *supra* note 63, at 3.

⁶⁶ The Appeal Board has explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's

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 commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

There is some evidence against mitigating Applicant's conduct. For three years he experienced financial difficulties by enabling his girlfriend's gambling compulsion by his somewhat irresponsible acquiescence in permitting her to use credit cards and lines of credit. That compulsion resulted in the use of \$75,600 worth of financial assets and an eventual bankruptcy in 1997. Eventually, he resolved to stop the situation, and he and his girlfriend parted ways.

The mitigating evidence under the whole-person concept is more substantial. Applicant intervened in his girlfriend's compulsive gambling and cut off her pool of funds when he declared bankruptcy and they split up. It is significant that once his financial delinquencies were resolved, and his relationship was dissolved, he no longer experienced financial difficulties. To the contrary, he has become a model citizen, husband, caring father, and good credit risk. His financial portfolio is now outstanding. And, he has not been to a casino for gambling or even entertainment since 2006.

Of course, the issue is not simply whether all his debts are resolved or his gambling activities are under control; it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. I am mindful that while any one factor, considered in isolation, might put Applicant's credit history and personal conduct in an unsympathetic light, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal

intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

analysis.⁶⁷ His overall efforts and evidence to satisfactorily explain the circumstances highlighted in the SOR, are sufficient to mitigate any continuing security concerns. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁶⁸

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.” However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has “ . . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan.” The Judge can reasonably consider the entirety of an applicant’s financial situation and his [or her] actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Ever since Applicant separated from his girlfriend and had his unsecured debts discharged in 1997, there are a significant positive signs in Applicant’s favor that are sufficient to show he can “live within [his] means, satisfy debts, and meet financial obligations.” See AG ¶ 18. Overall, the record evidence leaves me without substantial questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial considerations and rebutted the personal conduct alleged.

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:

FOR APPLICANT

Subparagraph 1.a:

For Applicant

⁶⁷ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

⁶⁸ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Paragraph 2, Guideline F:

FOR APPLICANT

Subparagraph 1.a:

For Applicant

Subparagraph 1.b:

For Applicant

Subparagraph 1.c:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ROBERT ROBINSON GALES
Administrative Judge