



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



In the matter of: )  
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) ISCR Case: 09-07718  
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Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: *Pro se*

February 28, 2011

**Decision**

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence, eligibility for access to classified information is denied.

On June 29, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On July 6, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). 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 adjudicative guidelines effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on June 21, 2010, and requested that the case be decided on the written record in lieu of a hearing. On October 15, 2010, Department Counsel prepared a File of Relevant Material (FORM) containing 12 Items and mailed

Applicant a complete copy on October 18, 2010. Applicant received the FORM on October 29, 2010, and had 30 days from its receipt to file objections to the FORM and submit additional information. He did not submit any documentation. On December 28, 2010, DOHA assigned the case to me.

### **Findings of Fact**

In his response, Applicant admitted all allegations in the SOR. His admissions are incorporated as factual findings.

Applicant is 63 years old and married. He and his wife have four adult children. In August 2008, he began working as a senior production painter for a defense contractor. Prior to this position, he was unemployed for six months.

Applicant accumulated a significant amount of delinquent debt since 2003. (Items 7, 9, 10) On March 1, 2008, Applicant entered into a debt consolidation program to repay his debts that consisted primarily of credit cards bills.<sup>1</sup> (Item 8.) During an interview with a government investigator in July 2009, he admitted that he has a history of gambling that spans 20 years. Within the six years before the interview, his gambling became a serious financial problem because he was spending \$200 to \$300 a week at the casino or at the race tracks. He admitted that he usually lost money. He disclosed that in early 2008, he went to Gamblers Anonymous for three months, which helped curb his gambling. He then stopped attending meetings and resumed gambling, but decreased the amount of money he spent. (*Id.*) According to Interrogatories he completed on January 19, 2010, the last time he gambled was on December 30, 2009, and he had no intention to gamble in the future. (*Id.*)

Based on credit bureau reports (CBR) dated July 2009, January 2010, and October 2010, the SOR alleged 10 delinquent debts totaling \$30,653 that began accruing in 2003. (Items 7, 9, 10) In his Answer to the SOR, Applicant admitted owing all of the debts and submitted a copy of his debt resolution account, as of July 2010, which includes some of the SOR debts.<sup>2</sup> (Item 5.) According to that exhibit, the following four SOR debts, totaling \$15,898, have been settled and paid: (¶ 1.e) for \$5,391; (¶ 1.g) for \$ 2,739; (¶ 1.h) for \$5,888; and (¶ 1.i) for \$1,880.

Applicant submitted his budget as of January 2010. He and his wife have a net monthly income of \$3,787 and expenses of \$1,868. He makes a monthly payment of \$607 on his debts, leaving approximately \$1,312 remaining at the end of the month. (Item 8.)

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<sup>1</sup>The number of debts included in this plan is unclear from the documents in the files, as is the amount owed at the time the agreement was executed. Pages from the exhibit are missing.

<sup>2</sup>Several debts identified in the account balance summary do not match and cannot be identified with the SOR debts. Hence, it is not possible to conclude that all of the SOR debts are being resolved through his debt repayment plan.

Applicant did not provide information concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used 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 overarching adjudicative goal is a fair, impartial, and commonsense 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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

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.

## 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.

AG ¶ 19 notes three disqualifying conditions that could potentially raise security concerns in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern.

Based on three CBRs and his admissions, Applicant has been unable or unwilling to satisfy delinquent debts that began accruing in 2003, many of which are the result of his gambling habits and continue into the present. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 20 sets forth conditions that could mitigate 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.

Applicant's financial delinquencies began accruing in 2003, some of which remain unpaid or unresolved. Because the problems are ongoing and not isolated, there is insufficient evidence to support a finding that the indebtedness is unlikely to recur or continue, especially in view of his long history of gambling. Hence, AG ¶ 20(a) does not apply. That history prevents the application of AG ¶ 20(b) because the circumstances creating Applicant's financial problems were within his control.

Applicant established some mitigation under AG ¶ 20(c) and AG ¶ 20(d). He submitted evidence that he entered into a debt payment plan in March 2008 and in good-faith resolved at least four debts. He did not submit evidence that he has received financial counseling or sufficient evidence to indicate that the situation is under control. He did not provide independent evidence to corroborate his assertions that he no longer gambles, which has been the source of his indebtedness over the past six years according to the record evidence.

There is no evidence in the record verifying that he formally disputed or investigated any debts, which is necessary to trigger the application of AG ¶ 20(e). There is no evidence to support the application of AG ¶ 20(f).

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They include the following:

(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.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Applicant is a mature individual, who has worked for a defense contractor since August 2008. Prior to starting that position, he responsibly entered into a debt repayment plan to resolve debts that he accumulated as a result of his gambling. Although he has paid four of the SOR delinquent debts, which totals about half of the amount alleged in the SOR, the evidence is not clear as to the status of the six debts remaining debts. Of more concern, however, is the lack of independent evidence to corroborate and verify Applicant's assertions that as of December 30, 2009, he has discontinued gambling. He also failed to provide an explanation for why he stopped participating in Gamblers Anonymous, which he acknowledged helped him curb his gambling habits. Given his 20-year history of gambling, his statements are insufficient to outweigh the security concerns related to years of engaging in a habit that demonstrated a lack of self-control and good judgment. Applicant failed to demonstrate financial rehabilitation, which would tend to indicate that the continuance or recurrence of similar issues is unlikely.

Overall, the record evidence creates doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial considerations at this time.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraphs 1.g through 1.i:	For Applicant
Subparagraph 1.j:	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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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SHARI DAM  
Administrative Judge