



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



In the matter of:)
)
-----) ISCR Case No. 10-08723
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: Kenneth M. Roberts, Esq.

November 30, 2011

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny or revoke his eligibility for a security clearance to work in the defense industry. The evidence shows he has a history of financial troubles due to a combination of gambling losses, providing financial support to adult members of his family (stepchildren), and his wife's unemployment. He is resolving his financial problems through an ongoing Chapter 13 bankruptcy case, in which he has made monthly payments since about July 2010. Nevertheless, he gave a deliberately false answer in a December 2009 security clearance application, in which he denied ever having experienced financial problems due to gambling. The evidence shows that was not the case. Accordingly, as explained below, this case is decided against Applicant due to his deliberately false statement.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on March 4, 2011, the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) explaining it was unable to find that it was clearly consistent with the national interest to grant Applicant access to classified information. The SOR is similar to a complaint, and it detailed the factual basis for the action under the security guidelines known as Guideline F for financial considerations and Guideline E for personal conduct.

Applicant timely answered the SOR and requested a hearing. The case was assigned to another administrative judge on April 20, 2011, before it was assigned to me June 10, 2011. The hearing took place August 2, 2011. The transcript (Tr.) was received August 17, 2011.

Findings of Fact

Under Guideline F, the SOR alleged a 2009 Chapter 13 bankruptcy case that ended with a dismissal in 2010, and a 2010 Chapter 13 bankruptcy case that is ongoing. Under Guideline E, the SOR alleged that Applicant gave a deliberately false answer in response to a question about his financial record when he completed a security clearance application in December 2009. In Applicant's reply to the SOR, he admitted the Guideline F allegations. He also admitted that he provided an incorrect answer to the question concerning his financial record and gambling, but denied that his answer was deliberately false. He further explained his answer as follows:

At the time I was addicted to gambling and unaware that my condition could influence my ability to make correct decisions because I did not fully understand the ways that the addiction could take control of my life and cause me to answer incorrectly. I now know that had I not been influenced by a state of mind that had me in total denial I would have answered the question positively.²

His admissions are accepted as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

² Answer.

Applicant is a 51-year-old employee of a federal contractor. His employment history includes honorable active duty service in the U.S. Air Force during 1978–1982. He has since worked for a series of companies engaged in defense contracting. He has worked as an electronics technician for his current employer since 2001. He has an excellent employment record as verified by the testimony of his supervisor and multiple letters of recommendation from colleagues.³ He has held a security clearance since serving in the Air Force.

Applicant's first marriage ended in divorce. He married his current wife in 1999. There are no minor children living in their household, although his wife's adult children have lived with them for substantial periods over the last several years.⁴ During these periods, he was essentially the sole financial provider for the household, and this circumstance created a financial and emotional strain on him. He believes this circumstance was one of the reasons for his gambling, because he used it as an escape to avoid thinking about his situation. He has not gambled since November 2010, when he spent \$32, and he has no intention to gamble in the future.⁵ He attends meetings of Gamblers Anonymous, and he and his wife have participated in pastoral counseling through their church.

Applicant has a history of financial troubles, which he does not dispute. The financial troubles are due to a combination of gambling losses, providing financial support to adult stepchildren, and his wife's unemployment. As a result, he filed for Chapter 13 bankruptcy in May 2009, a repayment plan was confirmed in July 2009, and the case ended in dismissal in June 2010.⁶ It appears the dismissal resulted from Applicant falling behind on his mortgage loan payments. His creditors included the IRS for \$6,805 in back taxes (listed on Schedule E) and 60 creditors for \$33,506 in unsecured debts (listed on Schedule F). Before the case was dismissed, Applicant paid \$7,980 per the plan, of which \$3,541 was disbursed to creditors. After the dismissal, Applicant filed another Chapter 13 bankruptcy case in July 2010.⁷ A 60-month repayment plan was confirmed by the court, and Applicant has been making the scheduled monthly payments since July 2010. He is now making monthly payments of \$1,300. His creditors include the IRS for \$6,805 in back taxes and 59 creditors for \$27,599 in unsecured debts (listed on Schedule F).

³ Tr. 19–36; Exhibits K–R.

⁴ Exhibit A.

⁵ Tr. 76–79.

⁶ Exhibits 3 and 4.

⁷ Exhibits 5, 6, F, G, H, and I.

Applicant completed a security clearance application in December 2009.⁸ In response to the relevant question⁹ about his financial record, he fully disclosed his 2009 Chapter 13 bankruptcy case, which was then ongoing. In response to the relevant question¹⁰ about his financial record and gambling—which asked have you ever experienced financial problems due to gambling—he answered in the negative.

About three months later in March 2010, Applicant was interviewed as part of a background investigation.¹¹ He explained that he decided to file for bankruptcy because he had previously overextended himself financially by using credit card cash advances to gamble, buy groceries, buy gas, and pay for recurring monthly expenses, because he was attempting to maintain monthly payments for back taxes owed to the IRS. During the same interview, he disclosed that he was 60-days delinquent on his mortgage loan. He explained that he was unable to make his December 2009 and January 2010 mortgage payments because he had gambled with and lost the money allocated for those expenses. Notably, this took place during his initial Chapter 13 bankruptcy case.

To obtain additional information, DOHA issued interrogatories to Applicant, to which he replied in January 2011.¹² Applicant indicated that his mortgage loan was current and he was making the scheduled monthly payments. This is consistent with his hearing testimony. Concerning the circumstances surrounding his bankruptcy, he explained that he was borrowing money (the cash advances) to cover his gambling losses and to stay current with his bills. He then fell behind on all his financial obligations, and he concluded that bankruptcy was the only option to allow him to remain in his house and prevent him from going deeper into debt. Concerning his denial of ever having experienced financial problems due to gambling, he explained his answer as follows:

It [gambling] is and can be a serious fault/personal problem when taken to extremes. I was scared to admit it and know that it can seriously affect the status of my clearance. I do not want to lose my clearance and not gambling has been helping me to be a better person.¹³

In his hearing testimony, Applicant elaborated on his denial as follows:

⁸ Exhibit 1.

⁹ Exhibit 1 (Question 26a).

¹⁰ Exhibit 1 (Question 26o).

¹¹ Exhibit 2 (personal subject interview).

¹² Exhibit 2 (interrogatories).

¹³ *Id.*

Being addicted, I didn't feel - - I just didn't want to answer it correctly at the time. I can't say I would - - from now, I would always answer that yes, I did have a problem. But at the time, I was trying to hide from my problems. But I know it's not acceptable, but I didn't want to jeopardize my clearance, to be honest. But I know that I have, and I know that this is the only way to bring it to light and to give it - - to let you people make the decision you need to make.¹⁴

Law and Policies

This section sets forth the general principles of law and policies that apply to an industrial security clearance case. The only purpose of a clearance decision is to decide if an applicant is suitable for access to classified information. The Department of Defense takes the handling and safeguarding of classified information seriously because it affects our national security, the lives of our servicemembers, and our operations abroad.

It is well-established law that no one has a right to a security clearance.¹⁵ As noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."¹⁶ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹⁷ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁸

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²⁰ An

¹⁴ Tr. 88.

¹⁵ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

¹⁶ 484 U.S. at 531.

¹⁷ Directive, ¶ 3.2.

¹⁸ Directive, ¶ 3.2.

¹⁹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²⁰ Directive, Enclosure 3, ¶ E3.1.14.

applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²¹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²² In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²³ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²⁴

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.²⁵ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Analysis

Under Guideline F for financial considerations,²⁶ the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties.²⁷ The overall concern under Guideline F is:

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

²¹ Directive, Enclosure 3, ¶ E3.1.15.

²² Directive, Enclosure 3, ¶ E3.1.15.

²³ *Egan*, 484 U.S. at 531.

²⁴ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²⁵ Executive Order 10865, § 7.

²⁶ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²⁷ ISCR Case No. 95-0611 (App. Bd. May 2, 1996) (It is well settled that "the security suitability of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties.") (citation omitted); and see ISCR Case No. 07-09966 (App. Bd. Jun. 25, 2008) (In security clearance cases, "the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.") (citation omitted).

questions about an individual's reliability, trustworthiness, and ability to protect classified information.²⁸

Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information within the defense industry.

The evidence here supports a conclusion that Applicant has a history of financial problems or difficulties. The two Chapter 13 bankruptcy cases, the most recent of which is ongoing, raise security concerns because they indicate inability or unwillingness to satisfy debts²⁹ and a history of not meeting financial obligations³⁰ within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions. In addition, Applicant's gambling raises security concerns given that his financial problems are linked to it.³¹

There are six mitigating conditions to consider under Guideline F. Any of the following may mitigate security concerns:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;³²

²⁸ AG ¶ 18.

²⁹ AG ¶ 19(a).

³⁰ AG ¶ 19(c).

³¹ AG ¶ 19(f).

³² ISCR Case No. 99-0201 (App. Bd. Oct. 12, 1999) ("[T]he 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. Such standards are consistent with the level of conduct that must be expected of persons granted a security clearance.") (citations omitted); ISCR Case No. 02-30304 (App. Bd. Apr. 20, 2004) (relying on a legally available option, such as Chapter 7 bankruptcy, is not a good-faith effort) (citations omitted); ISCR Case No.

AG ¶ 20(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; or

AG ¶ 20(f) the affluence resulted from a legal source of income.

I have especially considered the mitigating conditions at AG ¶¶ 20(c) and 20(d). Taken together, Applicant's efforts to address his gambling, along with his track record of payments to the ongoing Chapter 13 bankruptcy case, are sufficient to overcome and mitigate the security concerns under Guideline F.

Under Guideline E for personal conduct,³³ the suitability of an applicant may be questioned or put into doubt due to false statements and credible adverse information that may not be enough to support action under any other guideline. The overall concern under Guideline E is:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations [that may] 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.³⁴

A statement is false when it is made deliberately (knowingly and willfully). An omission of relevant and material information is not deliberate if, for example, the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported.

The issue is whether Applicant made a deliberately false statement when answering a question about his financial record and gambling on his December 2009 security clearance application. Based on the evidence, to include his hearing testimony, I am persuaded he made a deliberately false statement.³⁵ As I understand his position, Applicant contends that his denial was part of his gambling addiction that he had yet to

99-9020 (App. Bd. Jun. 4, 2001) (relying on the running of a statute of limitations to avoid paying a debt is not a good-faith effort).

³³ AG ¶¶ 15–17 (setting forth the security concern and the disqualifying and mitigating conditions).

³⁴ AG ¶ 15.

³⁵ AG ¶ 16(a).

fully confront, and therefore, his answer was not deliberately false.³⁶ Assuming for the sake of argument that this theory is valid or true, at best it is an extenuating circumstance that helps explain his actions, and I have considered it as such. Applicant's answer to the gambling question was objectively false, and he knew it was false at the time. He knew it was false because he was then involved in his initial Chapter 13 bankruptcy case, filed months earlier, which was brought about, in part, due to his gambling. Given the evidence as a whole, I conclude that he gave a deliberately false answer to the gambling question because he knew, based on his long experience holding a security clearance, that a truthful answer would reflect poorly on him and might prevent him from retaining a security clearance. He has admitted as much, explaining that he answered the question incorrectly because he was concerned or scared that a correct answer would jeopardize his clearance.

In reaching these conclusions, I considered all the mitigating conditions under Guideline E,³⁷ and none, individually or in combination, are sufficient to overcome and mitigate the security concerns. Indeed, making a deliberately false statement to the federal government during the security clearance process is serious misconduct, and it is not easily explained away, extenuated, or mitigated.

To conclude, the evidence of Applicant's deliberately false statement justifies current doubts about his judgment, reliability, and trustworthiness. Following *Egan* and the clearly-consistent standard, I resolve these doubts in favor of protecting national security. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I gave due consideration to the whole-person concept³⁸ and Applicant's favorable evidence, to include his past military service and his many years as a security clearance holder. Although these matters weigh in his favor, they are insufficient to overcome the security concerns. Accordingly, I conclude that Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a–1.b:	For Applicant

³⁶ Neither Department Counsel nor Applicant presented evidence (e.g., expert testimony) that Applicant was formally diagnosed by a qualified medical or mental-health provider as a pathological gambler, which is a recognized impulse-control disorder under the DSM-IV-TR. All references to addiction in this decision are based on Applicant's description of his behavior.

³⁷ AG ¶ 17(a)–(g).

³⁸ AG ¶ 2(a)(1)–(9).

Paragraph 2, Guideline E: Against Applicant

Subparagraph 2.a: Against Applicant

Conclusion

In light of the record as a whole, 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.

Michael H. Leonard
Administrative Judge