



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



In the matter of:)	
)	
XXX, Xxxxx Xxxxx)	ISCR Case No. 11-06587
)	
Applicant for Security Clearance)	

Appearances

For Government: Stephanie C. Hess, Esquire, Department Counsel
For Applicant: *Pro se*

05/31/2012

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I deny Applicant's clearance.

On 20 October 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a hearing. DOHA assigned the case to me 3 March 2012, and I convened a hearing 27 March 2012. DOHA received the transcript (Tr.) 4 April 2012.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-7, and Applicant exhibits (AE) A-D. AE D was timely received post hearing.

²DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

Findings of Fact

Applicant admitted the SOR allegations. He is a 50-year-old electrical engineer employed part-time by a defense contractor since October 2010. He can be employed full-time if he obtains his clearance. He has not previously held a clearance.

Applicant has an extensive history of financial problems, punctuated by two Chapter 7 bankruptcy discharges. Applicant first filed for Chapter 7 bankruptcy protection in October 1992. In February 1993, he was discharged from about \$40,000 debt (SOR 1.a). Applicant attributes his financial problems to his overboard spending.

Applicant filed for Chapter 7 bankruptcy protection a second time in October 2009. He was discharged from nearly \$1.4 million in dischargeable debt in January 2010 (SOR 1.b). Applicant's second bankruptcy discharge is wholly attributable to his gambling problem.

From 2006 to 2007, Applicant gambled about twice per month at an out-of-state casino destination, losing \$2,000-8,000 per month. He financed his gambling through an equity line of credit on his home (SOR 1.d), cash advances on his credit cards (SOR 1.e), a \$13,000 line of credit at one casino that became delinquent in 2007 and was reduced to judgment in 2008 (SOR 1.f), a \$5,000 bad check to a second casino (SOR 1.g), and a \$7,000 line of credit at a third casino that also became delinquent in 2007 (SOR 1.h). These debts were discharged in the 2009 bankruptcy. But despite his January 2010 bankruptcy discharge, Applicant continues to gamble. From 2007 to 2010, he traveled to a nearby state about six times to gamble at slot machines. In 2011, he traveled to the casino city twice to gamble at slot machines (SOR 1.i).

Because of his gambling losses, Applicant was unable to pay his federal income tax to the Internal Revenue Service (IRS) for tax year 2009 when due. Consequently, he owed the IRS \$4,800. (SOR 1.c). Applicant had made payments to the IRS reducing his balance to \$1,310 by February 2012 (AE A), but had stopped making payments long enough ago that the IRS was threatening to file a tax lien against him. Applicant annotated AE A to suggest that he had established a repayment plan with the IRS to begin in late-April 2012, but produced no confirmation of such a plan from the IRS. Meanwhile, he has fallen 180-days delinquent on four education loans totaling nearly \$41,000. His arrears are currently \$7,300 (Tr. 36; GE 4).

Applicant has received no financial or credit counseling, except for the minimal counseling required for his 2009 bankruptcy filing. He claims \$1,200 positive monthly cash flow, but has corroborated no efforts to resolve his remaining delinquent debt.

Policies

The adjudicative guidelines (AG) list factors to evaluate a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented.

Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, disputed facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.³

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. While Applicant's actual indebtedness is only about \$1,300, Applicant's January 2010 bankruptcy discharge of nearly \$1.4 million raises grave security concerns about Applicant's access to classified information, particularly where he already had one Chapter 7 bankruptcy discharge in February 1993. And where he continues to gamble.⁴ Further, while Applicant had reduced his IRS debt to \$1,300, he had stopped making payments and the IRS was threatening further legal action in February 2012. In addition, although not alleged in the SOR, he was \$7,300 delinquent on \$41,000 in education loans. Neither the IRS debt nor the federally-insured education loans are dischargeable in bankruptcy.

Applicant meets no mitigating factors for financial considerations. His financial difficulties are recent, his gambling is ongoing, and the circumstances under which his

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴¶19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations; (f) financial problems that are linked to . . . gambling problems . . . ; (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.

financial problems occurred are thus likely to recur.⁵ Applicant's compulsive gambling is not a circumstance beyond his control, and while his Chapter 7 bankruptcy discharge may have been the only sensible action available to him, he cannot be considered to have he acted responsibly in addressing his debts under the circumstances because the debts were due to his own misconduct.⁶ Further, Applicant has not addressed his IRS debt, the one debt he could not discharge in bankruptcy.⁷

The concern with Applicant is that while he credibly states his intent to resolve these debts, his financial situation remains in flux. He appears to have the means to address his remaining delinquent debt, but has not demonstrated a plan for doing so. Thus, there are too many unknowns to conclude that his financial problems are headed for resolution.⁸ He has not undertaken meaningful financial counseling, and his documents do not suggest a clear path for resolving his delinquent debts. Without such a path, I cannot conclude that financial problems are unlikely to recur. Further, the record lacks sufficient information upon which to base a "whole-person" analysis supporting a favorable clearance action. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraphs a-i: Against Applicant

Conclusion

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

JOHN GRATTAN METZ, JR
Administrative Judge

⁵¶ 20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . . ;

⁶¶ 20 (b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

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

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