



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



In the matter of:)
)
) ISCR Case No. 11-15090
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro se*

09/05/2013

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings and exhibits in this case, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. His eligibility for a security clearance is denied.

Statement of Case

On May 18, 2011, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On March 21, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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 for SORs issued after September 1, 2006.

Applicant provided a notarized answer to the SOR, dated March 26, 2013, and requested that his case be determined on the written record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The Government compiled its File of Relevant Material (FORM) on June 18, 2013. The FORM contained documents identified as Items 1 through 7. By letter dated June 18, 2013, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on June 25, 2013. His response was due on July 25, 2013. Applicant did not submit any information within the required time period. On August 27, 2013, the case was assigned to me for a decision.

Findings of Fact

The SOR contains four allegations of disqualifying conduct under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.d.). The Guideline F allegations are cross-alleged as a security concern under Guideline E, Personal Conduct (SOR ¶ 2.a.) In his Answer to the SOR, Applicant admitted the four Guideline F allegations and the Guideline E allegation, although he denied the summary security concern identified for each of the guidelines. Applicant's admissions are entered as findings of fact. (Item 1; Item 2.)

The facts in this case are established by the record provided by the Government and by information provided by Applicant. The record evidence includes Applicant's May 18, 2011 e-QIP; official investigation and agency records; Applicant's responses to DOHA interrogatories;¹ Applicant's credit report of May 24, 2011; and currency transaction reports by casinos. (See Items 4 through 7.)

Applicant is 72 years old. In 1958, after graduating from high school, he enlisted in the U.S. military, where he served for 29 years. In 1987, he was honorably discharged. He was then employed by a government contractor from 1987 to 2002. He has worked as a coordinator for his current employer, a government contractor, since 2002. He was first awarded a security clearance in 2001. (Item 4.)

Applicant has been married and divorced three times. Two children, now adults, were born to his first marriage. He does not pay child support or alimony. (Item 4; Item 5.)

Applicant reports the following sources of monthly net income: military retirement, \$2,700; Social Security, \$1,700; and employment with government contractor, \$2,200. He reports the following monthly expenses: mortgage, including late penalties, and utilities, \$2,200; groceries and food, \$300; transportation (car payments, gas, and

¹ Applicant was interviewed under oath by an authorized investigator from the U.S. Office of Personnel Management (OPM) on July 13, 2011. In response to DOHA interrogatories, Applicant reviewed the investigator's report and corrected a reference to the name of his third wife. Then, on February 12, 2013, Applicant signed a statement that the investigator's report accurately reflected his interview. (Item 5.)

repairs), \$350; insurance (including, auto, medical, and life), \$150; payment of current and delinquent debts, \$600; and luxury expenses, entertainment, etc., \$2,000 to \$3,000. (Item 5.)

When Applicant was interviewed in July 2011, he told the investigator that he had experienced financial problems because of a gambling habit he acquired during his military service. After retiring from military service in 1987, Applicant moved to an area that permitted legalized gambling, and he acquired work as a government contractor. He estimated that from 1987 to 2002, he gambled as much as one-third of his military retirement pay and employment pay every week at casinos. (Item 5.)

From 2002 onward, Applicant reported that his gambling increased. He estimated that he currently gambles at least one-third to one-half of his income from his military retirement, Social Security, and employment income two or three times a week at gambling casinos. Applicant told the investigator that there was an “adverse relationship” between his ability to meet his financial obligations and his need to gamble, and he did not know if he would incur financial delinquencies in the future. (Item 5.)

Applicant recounted that he had adequate income to meet his monthly mortgage payment of \$2,500, live comfortably, and meet his financial obligations. However, he desired more disposable income for gambling. Feeling that he had nothing to lose, he intentionally did not pay his mortgage for several months in order to pressure his mortgage lender to modify his loan and reduce his payments. The mortgage lender responded to Applicant’s pressure by granting him a loan modification and reducing his monthly mortgage payment to \$1,400. (Item 5.)

Applicant also acknowledged that in the past, he used his credit card and cash card to withdraw cash advances for gambling. These accounts have been closed by the lenders, and they reflect delinquent debts. (Item 5; Item 6.)

Applicant identified his need to gamble as “relentless.” He believes he is addicted to gambling, and he becomes euphoric at the possibility of winning a high amount of money quickly. He was not able to identify an event that might lead him to give up gambling. He has not had treatment or counseling for his gambling addiction. (Item 5; Item 7.)

Applicant stated that he had never discussed his gambling addiction in depth in previous security clearance investigations. He explained that he did not believe information on his gambling was relevant, and he felt the investigators did not need to know about it. (Item 5.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and

it has emphasized that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, the administrative judge applies these guidelines 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.

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 in seeking to obtain 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 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 facts of this case raise security concerns under AG ¶ 19(i), which reads: “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 to pay gambling debts, family conflict or other problems caused by gambling.”

Applicant acknowledged a gambling addiction and described how it had intensified over time. He reported that he currently gambles at least one-third to one-half of his income from his military retirement, Social Security, and employment income two or three times a week at casinos. He drew cash from his credit card and bank card accounts to finance his gambling, causing the creditors to close the accounts. When he wanted to have more of his income for gambling, he deliberately failed to pay his monthly mortgage in order to force his lender into modifying and reducing the amount of his monthly payment. When his lender acceded to his demand, he used his increased discretionary income for gambling.

The guideline also includes examples of conditions that could mitigate security concerns arising from Applicant’s behavior. Two Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s gambling addiction. The behavior might be mitigated if it “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(a)). Additionally, Applicant’s behavior might be mitigated if he were able to show that he “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(c)).

Applicant's addictive gambling began in about 1987, and it continues to this day. He has not sought counseling for his addictive behavior, and he acknowledges that it could lead to financial delinquencies. Applicant's unresolved addictive behavior continues to raise concerns about his reliability, trustworthiness, and ability to protect classified information. I conclude that AG ¶¶ 20(a) and 20(c) do not apply in mitigation in Applicant's case.²

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern:

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 E allegation in the SOR raises a security concern under AG ¶ 16(e), which reads: "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 one's personal, professional, or community standing."

Applicant admitted a gambling addiction which became stronger over time, causing him to gamble ever greater amounts of money. He organized his life to support his addiction. He withdrew cash advances from his credit card and bank accounts to finance his gambling, actions which resulted in his creditors closing those accounts. He deliberately failed to pay his home mortgage, even though he could afford to do so, in order to force his lender to modify his home mortgage and lower his monthly payment. He then used his increase in discretionary income to finance his gambling activities. This personal conduct made Applicant vulnerable to exploitation, manipulation, and duress.

Several Guideline E mitigating conditions might apply to the facts of this case. Applicant's disqualifying personal conduct might be mitigated under AG ¶ 17(c) if "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not case doubt on the individual's reliability, trustworthiness, or good judgment." AG ¶ 17(d) might apply if "the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to occur." AG ¶ 17(e) might apply if "the

² AG ¶¶ 20(b), 20(d), 20(e), and 20(f) do not apply to the facts of Applicant's case.

individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.”

Applicant admits a long-standing gambling addiction which began in about 1987 and continues to this day. He has acknowledged his addiction, but he has not sought treatment or counseling to alleviate the stressors that cause his behavior. Moreover, he has not taken positive steps to reduce or eliminate his vulnerability to exploitation, manipulation, or duress. I conclude that AG ¶¶ 17(c), 17(d), and 17(e) do not apply in mitigation in this case.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of an applicant’s conduct and all relevant 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature adult of 72 years. He has organized his life around his gambling addiction. He has not sought treatment or counseling, even as he has acknowledged that his addiction has grown stronger and more demanding over time. He did not discuss his gambling behavior in previous security investigations because he did not believe that his addiction was relevant.

Applicant states that his gambling addiction has increased over time. His future financial stability is uncertain. Additionally, Applicant’s unaddressed gambling addiction makes him vulnerable to exploitation and manipulation, raising security concerns about his trustworthiness, judgment, reliability, and ability to protect classified information.

Overall, the record evidence leaves me with doubts about Applicant’s eligibility and suitability for a security clearance. I conclude that Applicant failed to mitigate the security concerns arising under Guidelines F and E.

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 F:	AGAINST APPLICANT
Subparagraphs 1.a. - 1.d.:	Against Applicant
Paragraph 2, Guideline E:	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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge