



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



In the matter of:)
)
 REDACTED) ISCR Case No. 14-02914
)
 Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

01/30/2017

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant incurred online gambling losses of approximately \$60,000-\$65,000. He has satisfied all but one delinquent credit card debt of \$19,467 that was caused by his gambling. He does not intend to pay the debt because if he reaffirms it, the creditor will no longer be legally barred by state statute from collecting the full balance. Concerns persist about Applicant's financial judgment. Clearance is denied.

Statement of the Case

On October 9, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended (EO); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on September 1, 2006.

On November 1, 2014, Applicant answered the SOR allegations and requested a decision on the written record without a hearing. At Applicant's request, the case was subsequently converted to a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). (Tr. 9-10.) On May 23, 2016, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On May 19, 2016, I scheduled a hearing for June 15, 2016.

I convened the hearing as scheduled. Three Government exhibits (GEs 1-3) and three Applicant exhibits (AEs A-C) were admitted into evidence without objection. Applicant testified, as reflected in a transcript (Tr.) received on June 22, 2016.

Findings of Fact

The SOR alleges that Applicant owed a credit card collection debt of \$19,467 as of October 2014 and that he incurred the delinquency because of his gambling problems (SOR ¶ 1.a). When he answered the SOR allegation, Applicant admitted the debt and that his compulsive gambling led to the debt. He asserted that his gambling activities ceased in May 2011. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 51-year-old project assistant with an associate degree awarded in February 1990. He has been married since May 1987 and has two adult children ages 28 and 23. Applicant served on active duty in the U.S. military from January 1986 to January 1990, when he was granted an honorable discharge. He has worked for his current employer, a defense contractor, since February 1990. He seeks to retain a secret clearance. (GE 1.)

In approximately July 2006, Applicant began to play online poker. By July 2010, Applicant was gambling compulsively through daily involvement in online poker games. In addition to not getting a lot of sleep, he incurred about \$60,000-\$65,000 in credit card debt from online gambling. (GE 1; Tr. 39, 47.) In April or May 2011, the federal government shut down the wire transfers that facilitated the online payments. Applicant stopped online gambling completely, and he began to work with some of his creditors to resolve his excessive credit card debt. Applicant made payments to resolve a \$17,000 credit card debt after the creditor brought him to court. He sent verification letters to other creditors, and he managed to settle another \$20,000 credit card debt. (Tr. 39-41.) When he received no response to his verification letter about the credit card debt in the SOR, he followed up with a request for details of fees and accrued interest. He testified that he also received no response to that request. (Tr. 41.) In November 2010, a \$19,919 collection balance was sold to the creditor in the SOR. (GE 2.)

As of April 2011, Applicant's and his spouse's mortgage was in foreclosure proceedings. They had obtained the mortgage for \$233,600 in May 2003. A second mortgage obtained for \$147,900 in March 2007 was over 120 days past due. (GE 2.)

Applicant testified that he was able to obtain a modification of his primary mortgage and to forestall foreclosure until he was able to sell the home and satisfy his loan. (Tr. 30.) Available credit information shows that his second mortgage was satisfied in September 2012. His primary mortgage was closed with a zero balance on payment of \$175,424 in April 2013. (GEs 2, 3.) Applicant currently owns his residence on which he has a mortgage of \$120,000 obtained in November 2014. (GEs 1, 3.) He has been making timely mortgage payments of \$1,385 per month. (GE 3.)

On November 14, 2013, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) to renew his security clearance eligibility. Applicant responded affirmatively to an inquiry concerning whether he had ever experienced any financial problems related to gambling. He indicated that he had been involved in online poker games from approximately July 2006 to July 2010, "before it was turned off by the DOJ." He estimated his gambling losses at \$65,000. He indicated that he had ceased his online gambling and settled debt with creditors. Applicant denied any additional financial problems due to gambling. Applicant responded negatively to all the inquiries concerning delinquencies involving routine accounts, including whether any debts had been turned over to a collection agency in the past seven years and whether he was currently over 120 days delinquent on any debt. (GE 1.)

As of May 8, 2014, Applicant had yet to resolve the collection debt in the SOR, which had been placed with a collection entity for \$19,467 in July 2013. On October 9, 2014, the DOD CAF issued an SOR to Applicant because of that unresolved debt. Shortly after Applicant received the SOR, he called the creditor about possibly settling his debt. Applicant testified that he was told that he needed to verify his debt and take responsibility. (Tr. 26.) On November 1, 2014, Applicant answered the SOR allegation. He indicated that he had stopped online gambling in May 2011, but that his financial circumstances had been negatively impacted by his spouse losing her job that paid her \$52,000 annually in 2012. He indicated that he had taken steps to resolve the debt in the SOR. Applicant filed a dispute with the collection entity and requested verification for his account. On November 18, 2014, the collection entity advised Applicant that it had ceased collection efforts in response to his request and that no further collection efforts would be made "unless and until validation is provided." Applicant was also notified that because of the age of his debt, he would not be sued for it. (AE A; Tr. 34-35.) In follow-up correspondence on December 16, 2014, the collection entity advised Applicant that account documentation had been requested from his original lender. Applicant was again advised that because of the age of his debt and legal limits on when debtors can be sued, he would not be sued for the debt. (AE A.)

As of January 2016, Applicant was making timely payments on two car loans. His scheduled car payments are \$237 on a car loan obtained for \$11,995 in April 2013 and \$226 on a car loan obtained for \$14,786 in December 2014. He had zero balances on his open revolving credit card accounts. He had made no progress toward resolving the credit card collection debt in the SOR. (GE 3.)

In late May 2016 (Tr. 22), Applicant completed a Personal Financial Statement. He reported net monthly discretionary income of \$2,477 after paying his monthly expenses, his mortgage, his car payments, and \$249 per month toward a \$6,378 debt to an investment company. (AE B.) This debt may well be a loan against his retirement, although the evidence is unclear.

As of his hearing in mid-June 2016, Applicant had not made any payments toward the debt. (Tr. 26, 31.) In 2010 or 2011, he had researched the applicable state statute of limitations regarding legal debt collection. He learned that his state had a six year statute of limitations for some financial obligations, including notes payable on demand (AE C), and that the clock starts with the last activity on the account. (Tr. 43.) Applicant chose not to verify his liability for repayment because he would “re-obligate” himself under the statute of limitations to possible legal collection action for the full balance. He continues to feel that it is not in his best interest to arrange for repayment, given the creditor is “time-barred” from pursuing him in court.¹ He could cause himself financial difficulty, especially if he loses his employment, and the debt is scheduled to age off his credit report in March 2017.² (Tr. 26-28, 35.) Applicant does not believe that he is shirking his responsibility to the creditor or “hiding behind the law.” He testified that he “paid a heavy price for the damage to his credit report,” and that the statute of limitations is an example of the consumer protections in place against predatory practices used by lenders, such as increasing interest rates and fees “when somebody gets in trouble.” (Tr. 32-33.)

There is no evidence Applicant has engaged in online gambling since April or May 2011. Three or four times a year, he plays poker at a casino. Occasionally, he enters poker tournaments with entry fees that range from \$80 to \$120. While at the casinos, he plays “a few slots.” He was last in a casino in February 2016. (Tr. 45-47.) Applicant has never had any counseling for his gambling. He does not consider his poker playing at casinos to be a problem, citing his current stable financial situation. He denies any interest in online gambling. (Tr. 47.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 list potentially

¹ Applicant testified to his belief that he cannot come to an agreement with the creditor without exposing himself to the full balance. (Tr. 32.)

² Given that the collection entity had twice indicated he would not be sued for the debt, I asked him about what legal exposure he feared. Applicant responded, “Legal liability, I believe, none. Like I said, this ages off my credit report in March.” (Tr. 35.) He expressed his belief that the creditor would not pursue him in court as his situation stands, but should be acknowledge the debt, it would restart the clock, and he could be sued for the full amount. Applicant admitted that the creditor had not indicated that it would sue him in that circumstance. He was “just going by what the law says” based on his own research. (Tr. 35-36.)

disqualifying conditions and mitigating conditions, which are required to be considered 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 overall 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 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 concerns about financial considerations are set forth 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 evidence establishes that Applicant incurred approximately \$60,000-\$65,000 in gambling losses from online poker games between July 2006 and April 2011. His gambling caused him financial difficulties, which were apparently exacerbated by his spouse's loss of employment in 2012. When he applied to renew his security clearance in November 2014, he had not resolved a credit card debt of \$19,467 in collection since 2010. As of his hearing in June 2016, he had made no payments and did not intend to settle or satisfy the debt. Disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," AG ¶ 19(c), "a history of not meeting financial obligations," and ¶ 19(f), "financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern," are established. To the extent that Applicant relied on consumer credit cards to fund his online gambling habit, AG ¶ 19(i) is also implicated. AG ¶ 19(i) provides:

(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.

Concerning mitigation of Applicant's delinquent debts, 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," applies in that the debt was incurred more than five years ago. It is infrequent in that it is the only delinquency remaining, although the evidence shows that his financial difficulties exceeded one past-due debt. AG ¶ 20(a) does not mitigate the financial judgment concerns that persist because of Applicant's unwillingness to address a debt that he acknowledges he incurred.

Applicant attributed his financial problems to his gambling, but also to the loss of income when his spouse became unemployed in 2012. Loss of employment is a circumstance contemplated within AG ¶ 20(b), which provides:

(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.

While the loss of spousal income likely compromised his ability to make payments on credit card debts incurred in gambling, the debt in the SOR went to collection well before his spouse lost her job. Moreover, Applicant has not shown responsible behavior toward a creditor when he refuses to pay a legitimate debt because he can no longer be sued for the debt and it will be coming off his credit report.

Applicant apparently settled other delinquencies that were not alleged, including a \$17,000 debt after he was brought to court. He is paying his monthly expenses on time. However, with respect to the collection debt in the SOR, neither 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,” nor AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” applies. Despite being advised twice by the collection entity that it would not seek to collect the debt in court, Applicant remains unwilling to take action, fearing that it could expose him to possible legal collection activity. He does not want to jeopardize his present financial stability by having to make payments on a debt that is scheduled to age off his credit report in March 2017.

Applicant is not required to establish that he has paid off each debt in the SOR, or even that the first debts paid be those in the SOR. However, he is required to establish a reasonable plan to address his delinquencies, especially when he has funds to make payments.³ The DOHA Appeal Board has long recognized that debts remain relevant for security clearance purposes, even if they are no longer enforceable under state law because of a statute of limitations or cannot be legally listed on a credit report due to the passage of time. See e.g., ISCR 15-02326 (App. Bd. Oct. 14, 2016). The Appeal Board has also held that reliance on a state’s statute of limitations does not constitute a good-faith effort to resolve financial difficulties. See e.g., ISCR 15-01208 (App. Bd. Aug. 26, 2016), citing 03-04779 (App. Bd. Jul. 20, 2005). It may be financially advantageous to Applicant for him to ignore the debt, but it casts doubt on his judgment and reliability with regard to complying with security rules and regulations. Applicant’s occasional gambling at casinos since May 2011 has not caused him additional financial problems. Even so, the financial considerations security concerns are not fully mitigated in light of his lack of intention to satisfy a debt that he incurred partially or wholly because of compulsive gambling.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative

³ The DOHA Appeal Board stated in ISCR Case No. 07-06482, decided on May 21, 2008, in part:

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.” See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate[s] that he has “. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.” See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant’s financial situation and his 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. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). 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.

process factors in AG ¶ 2(a).⁴ The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a longtime defense contractor employee who voluntarily disclosed that he experienced financial difficulties because of compulsive gambling. He took steps to address his mortgage that was in foreclosure proceedings and to repay most of his credit card delinquencies. Yet, his choice of self-interest over his ethical obligation to pay a debt he incurred, especially when he is on notice that it is an issue of security concern, raises considerable doubt about his willingness to comply with rules and regulations regarding the handling of classified information. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). For the reasons noted, I am unable to conclude that it is clearly consistent with the national interest to continue security clearance eligibility for Applicant.

Formal Findings

Formal finding for or against Applicant on the allegation set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, is:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraph 1.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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge

⁴ The factors under AG ¶ 2(a) are as follows:

(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.