



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-01641

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel

For Applicant: *Pro se*

03/06/2018

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to revoke her eligibility for access to classified information. She gambled away more than \$100,000 during 2009-2016, and she has borrowed heavily from various sources, including her retirement account, to fund gambling or pay gambling debts. Although she went to several counseling sessions, her gambling is ongoing. Her behavior reflects a recent or recurring pattern of questionable judgment, irresponsibility, and lack of self-control. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format) on July 29, 2014, and again on November 18, 2015.¹ This document is commonly known as a security clearance application. Thereafter, on December 7, 2016, after reviewing the application and the information gathered during a

¹ Exhibits 1 and 2.

background investigation, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant her eligibility for access to classified information. The SOR is similar to a complaint. It detailed the factual reasons for the action under the security guideline known as Guideline F for financial considerations.

Applicant answered the SOR on January 5, 2017. She admitted the factual allegations under Guideline F and provided brief explanations. She also requested a hearing before an administrative judge.

The case was assigned to me on May 1, 2017. The hearing took place as scheduled on July 13, 2017. Applicant appeared without counsel. Both Department Counsel and Applicant offered documentary exhibits, which were admitted as Exhibits 1-8 and A-D, respectively. The hearing transcript (Tr.) was received on July 21, 2017.

Findings of Fact

Applicant is a 55-year-old employee who is seeking to retain a security clearance that she has held for decades. She has been employed by a large defense contractor or its predecessor in interest since 1980. She earns an annual salary of about \$79,000 working as a configuration specialist. Her two marriages ended in divorce. She has a 30-year-old son.

Applicant disclosed that she had a gambling problem in her 2014 and 2015 security clearance applications.² She provided additional information about her gambling during a background investigation and in response to interrogatories.³ In response to the SOR, she admitted that she engaged in compulsive gambling and lost more than \$100,000 during 2009-2016. She further admitted that she borrowed about \$59,000 from various sources to fund her gambling. And she admitted borrowing about \$33,000 from a retirement account to pay gambling debts.

At the hearing, Applicant stated that she began gambling at a local casino in 2009, won \$1,000, and promptly lost her winnings to the house.⁴ She usually loses, and her largest single loss of \$4,000 occurred in 2015.⁵ More recently, she made about three trips to the casino in 2016 and lost about \$8,000; she also gambled in April, May, and June 2017, and lost about \$4,000.⁶

² Exhibits 1 and 2.

³ Exhibits 7 and 8.

⁴ Tr. 41-42.

⁵ Tr. 42-43.

⁶ Tr. 35-37

Applicant had about seven individual counseling sessions with a psychologist during 2016, but nothing in 2017.⁷ The counselor recommended she find a hobby to replace the gambling and attend Gamblers Anonymous or a similar group, but she has not followed through on those recommendations. She plans on obtaining additional counseling through her church.

Applicant paid for her gambling by charging it to a credit card account. Once the account reached its limit, she borrowed money from another source to pay off the credit card debt. For example, she obtained four loans for a total of about \$44,000 from a retirement account. To date, she is paying the following debts related to her gambling: (1) \$21,000 to \$23,000 she borrowed against a life insurance policy; (2) \$33,000 for two loans from a retirement account, with a balance of about \$23,000; and (3) \$11,000 on the credit card account, all of which are current and in good standing.⁸

Concerning her financial situation, Applicant reported a checking account balance of about \$2,000 and a savings account balance of about \$400.⁹ She has credit scores of 734 and 735, which are considered good.¹⁰ A review of several credit reports from 2014-2017 reveals no past-due, charged-off, or collection accounts.¹¹ Her mortgage loan account is current and in good standing, and she has not borrowed against her home to pay for gambling. She pointed out that she pays her bills on a timely basis and has sufficient means to pay the gambling debts, although doing so will take several years.¹²

Law and Policies

This case is adjudicated under Executive Order (E.O.) 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.¹³

⁷ Tr. 37-38.

⁸ Tr. 57-58; Exhibits A and B.

⁹ Tr. 45.

¹⁰ Exhibits B and C.

¹¹ Exhibits 3, 4, 5, 6, B, and C.

¹² Tr. 35.

¹³ The 2017 AG are available at <http://ogc.osd.mil/doha>.

It is well-established law that no one has a right to a security clearance.¹⁴ As noted by the Supreme Court in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁵ 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. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.¹⁶ The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹⁷

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹⁸ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁹

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²⁰ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²¹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²² In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²³

Discussion

Under Guideline F for financial considerations, 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. The overall concern is:

¹⁴ *Department of the 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).

¹⁵ 484 U.S. at 531.

¹⁶ 484 U.S. at 531.

¹⁷ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁸ Directive, ¶ 3.2.

¹⁹ Directive, ¶ 3.2.

²⁰ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²¹ Directive, Enclosure 3, ¶ E3.1.14.

²² Directive, Enclosure 3, ¶ E3.1.15.

²³ Directive, Enclosure 3, ¶ E3.1.15.

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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.²⁴

The concern is broader than the possibility that a person might knowingly compromise classified or sensitive information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions as most pertinent:

AG ¶ 19(h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and

AG ¶ 20(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control.

The evidence supports a conclusion that Applicant has a problematic financial history sufficient to raise a security concern under Guideline F. That history is established by Applicant's admitted excessive or compulsive gambling since 2009 to at least June 2017. Her gambling, although perfectly legal, is nonetheless considered excessive because she lost more than \$100,000 during 2009-2016, and she borrowed heavily to fund gambling or pay gambling debts. Indeed, she is currently paying off about \$67,000 she borrowed to pay for gambling.

I have considered Applicant's evidence of counseling under the mitigating condition at AG ¶ 20(c), and the evidence is insufficient to mitigate the security concern. First, the evidence consists of Applicant's self-reported attendance at seven individual counseling sessions during 2016, but nothing in 2017. There is no information from the counselor, much less a diagnosis, prognosis, and course of treatment for Applicant's

²⁴ AG ¶ 18.

condition, whatever it may be. Second, Applicant's excessive gambling continued unabated with losses of about \$8,000 in 2016 and \$4,000 through June 2017. Third, she was gambling in April, May, and June 2017, while her case was pending. Her actions show either a cavalier attitude for the security clearance process or the power that gambling has over her life. Neither is a matter in mitigation. For all these reasons, I am not persuaded that there are clear indications that Applicant's gambling problem is being resolved or is under control. Her behavior reflects a recent or recurring pattern of questionable judgment, irresponsibility, and lack of self-control.

Applicant's past and ongoing excessive or compulsive gambling is inconsistent with the standards expected of those who are granted the privilege of access to classified information in the defense industry. 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 also considered the whole-person concept. On that point, Applicant impressed me as a sincere, dedicated, and hard-working employee. I also considered her decades of service working in the defense industry. Nevertheless, I conclude that she did not meet her ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a-1.c:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant access to classified information.

Michael H. Leonard
Administrative Judge