



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



In the matter of: )  
 )  
 ) ISCR Case No. 16-01836  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: Marcus Pacheco, Esq.

01/03/2018  
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**Decision**  
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CERVI, Gregg A., Administrative Judge

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant completed a Questionnaire for National Security Positions (SF 86)<sup>1</sup> on November 18, 2015. On July 10, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations.<sup>2</sup>

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<sup>1</sup> Also known as a Security Clearance Application (SCA).

<sup>2</sup> The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on August 18, 2016, including documentary evidence in mitigation, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals issued a notice of hearing on March 9, 2017, and the hearing was convened on April 5, 2017. Government Exhibits (GE) 1 and 2, were admitted in evidence.<sup>3</sup>

### **Findings of Fact**

Applicant is a 51 year old system engineer for a defense contractor, employed since 2008, except for a three month period of unemployment in 2013 during sequestration. She earned a bachelor's degree in 2004. She has been married since 1994, and has three children and a grandchild. She has held a security clearance since 2006.

The SOR alleges Applicant filed a Chapter 7 bankruptcy in 2002, and a Chapter 13 bankruptcy in 2010. It also alleges Applicant has a Federal tax lien filed in 2009, failed to pay 2009 and 2010 Federal income taxes on time, and 2009 state income taxes on time. Finally, it alleges she gambled excessively from 2002 to 2016 resulting in debts included in her 2010 Chapter 13 bankruptcy, and continues to gamble.

Applicant married in 1994 and gained custody of her husband's children in 1995. They lived on a single income, school loans and credit cards from 1995 to about 1998 while she attended school. Applicant started gambling in 2001, and had about \$3,000 in gambling losses when they declared Chapter 7 bankruptcy in 2002. It was discharged in 2002.

Applicant stopped gambling from 2005 to 2007, but began again in late 2007 at an increased rate. Her husband had accumulated income tax debts because he was an independent contractor and did not have regular tax withholdings, and failed to file and pay two years of taxes when due. They also accumulated consumer and gambling debts, resulting in a Chapter 13 bankruptcy filing in 2010. Applicant accumulated about \$33,643 in gambling losses that were included in her Chapter 13 filing. They made payments as required under the Chapter 13 plan, but her husband lost his job in 2013 and remained unemployed for about nine months with health problems. By agreement with the trustee, they were able to modify their payments to increase their household funds. They successfully completed the Chapter 13 repayment plan in 2016 and received financial counseling. All tax returns have been filed. State taxes were paid in 2010, and delinquent Federal taxes were paid through a payment plan. The Federal tax lien was released in 2016.

Applicant sought professional counseling for gambling in 2010 and attended gambler's anonymous meetings. Her husband monitors her cash withdrawals over \$200. From 2012 to 2016, she significantly reduced her gambling to about five visits per year

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<sup>3</sup> The Government submitted Applicant's "Personal Subject Interview" for identification and admission into evidence. Applicant objected to its admission as lacking authentication. The objection was sustained and the exhibit was not admitted.

risking no more than \$100 per occasion and controlled her spending to ensure no funds needed to pay bills were used. By July 2016, she stopped all gambling and has abstained from gambling since. Applicant testified regarding her gambling recovery, setbacks, and complete abstinence since June 2016. Her counselor provided two letters in support of Applicant's progress. She continues to attend counseling therapy and gambler's anonymous meetings.

Applicant and her husband now earn about \$176,000 in gross pay, and have no credit card debts. They own their home and have savings and a retirement plan. Applicant is paying her student loans as required. Over the past seven to eight years, they maintained a positive financial status, pay their financial obligations on time, and Applicant is no longer gambling and has learned to effectively address the triggers that caused her gambling problems in the past.

### **Law and Policies**

The Director of National Intelligence (DNI) issued revised adjudicative guidelines (AG) in a Security Executive Agent Directive, effective on June 8, 2017. These AGs are applicable to this decision.

"[N]o 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 applicants 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 § 2.

National security eligibility is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider a person's stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865

§ 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See Egan, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” Egan, 484 U.S. at 531; see AG ¶ 1(d).

## **Analysis**

### **Financial Considerations**

The security concern for financial considerations is set out in AG ¶ 18:

Failure 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, other 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The relevant disqualifying conditions include:

- (a) inability to satisfy debts;

(c) a history of not meeting financial obligations;

(e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators;

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required; and

(h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts.

Applicant's admissions and the documentary evidence supporting the SOR allegations are sufficient to establish the disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following mitigating conditions are potentially relevant:

(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;

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

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

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant incurred delinquent debts, including from excessive gambling, resulting in twice filing for bankruptcy protection. Most recently, she and her spouse addressed their financial problems through a Chapter 13 repayment plan which was successfully completed in 2016. Applicant also addressed her gambling problem through professional counseling and a 12-step program, which she continues. She ceased gambling since June 2016 and acknowledges her problem and uses tools to address the triggers that precede gambling. She has her gambling problem under control and is aided by financial oversight from her spouse. She and her spouse now have a significant income, no credit card debt, savings, and a retirement plan, and have maintained a positive financial status for a number of years. Their tax obligations were satisfactorily resolved and sufficient time has passed with no new delinquencies. The evidence suggests that Applicant has maintained satisfactory control of her finances and that additional delinquencies are unlikely to recur. AG ¶¶ 20(a), (b), (c) (d) and (g) apply.

### **Whole-Person Concept**

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Although adverse information concerning a single criterion may not be sufficient for an unfavorable eligibility determination, the individual may be found ineligible if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or unstable behavior. (AG ¶ 2(e)).

I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in my whole-person analysis.

Applicant's resolved financial delinquencies took years of diligent work to make payments on debts and dedicated counseling to address her personal issues that triggered excessive gambling. Applicant's current financial status leaves me without doubts about her overall financial condition and ability to meet her financial responsibilities in the future. Her past financial delinquencies and gambling issues no longer cast doubt on his current reliability, trustworthiness, and good judgment.

Applicant has taken sufficient action to resolve her debts and gambling problem, and is on a solid financial footing. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national security interests of the United States to grant her eligibility for access to classified information.

### **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:	For Applicant
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Subparagraphs 1.a – 1.g:	For Applicant
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### **Conclusion**

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

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Gregg A. Cervi  
Administrative Judge