



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



In the matter of:)	
)	
)	ISCR Case No. 14-04267
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

06/18/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On October 28, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 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 adjudicative guidelines effective within the DOD for SORs issued after September 1, 2006.

On November 18, 2014, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. On April 17, 2015, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was mailed to Applicant on the same day, and it was received on April 25, 2015. Applicant

was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to any evidence offered, and it is admitted into the record. Applicant submitted additional information, which was admitted into the record without objection. The case was assigned to me on May 27, 2015.

Findings of Fact

Applicant admitted SOR allegations ¶¶ 1.a through 1.c. He denied the remaining allegations. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 66 years old. He is a graduate of a service academy and received a master's degree from a prestigious university. He and his wife have been married since 1972 and have two grown children ages 41 and 37. He served on active duty from 1971 until he was honorably discharged in 1980. He worked for the same federal contractor from 1995 until he was laid off in 2011, and subsequently retired. He held a security clearance while in the military and working for a federal contractor. He began working for his current employer, a federal contractor, in 2013.

Applicant attributed his financial difficulties to his wife's gambling problem. He stated that his father-in-law lived with them for a period of 17 years until he passed away. During his final seven years he had cancer and diabetes. Applicant's wife was the primary care provider for her father, and during the last couple of years she rarely got a full night's sleep. It was stressful for her and she was exhausted. During that time, Applicant spent 60 or more hours a week working and was not available to help his wife. Around the same time, their daughter had serious medical problems which exacerbated Applicant's wife's fatigue. His wife's father liked to gamble. Beginning in approximately 2004, his wife took him to casinos, and she also gambled. Applicant believed this was a stress reliever for his wife.

Applicant's wife handled the family finances. In the past, Applicant never had a reason to question his wife's spending. She hid her gambling habit from him. She would lose or hide the IRS W-2 forms that showed her winnings. She did not have taxes withheld from her winnings. None of her winnings were included in their federal income tax returns. Applicant stated at the time, he was unaware of the amount she won or lost. She used her winnings to continue to gamble. He estimated she lost about \$140,000 from 2005 to 2012.

In approximately 2008 or 2009, Applicant was contacted by the mortgage lender for their home and was told the mortgage was six months delinquent. He was unaware until this time of his wife's problem. Applicant used retirement savings to make the account current. He and his wife went to marriage counseling to resolve trust issues with regard to her gambling and their finances. Applicant wanted to trust his wife so he allowed her to continue to handle the finances. She was again untruthful to him about her gambling. He later learned she had misused their assets to gamble in approximately

2010 when he received notice from the mortgage lender that their house was in foreclosure. At that point, Applicant took over handling all of their finances. He and his wife maintain separate accounts. He keeps important financial accounts and documents in a locked safe. She is required to contribute \$1,000 monthly for household living expenses.

In 2012 Applicant's wife acknowledged her destructive behavior and stopped gambling. Applicant and his wife attend Celebrate Recovery, a 12-step program for compulsive behaviors. His wife is addressing her gambling compulsion, and he is addressing his workaholic behavior.¹

SOR ¶ 1.a (\$417,000) is a judgment on the foreclosed home. Applicant disputed the debt because the property was foreclosed and subsequently sold by the mortgage lender. Applicant provided a copy of IRS Form 1099-A regarding the property that he filed with his 2011 federal income tax return showing the outstanding balance of the principal that was reported to the IRS.²

The debts in SOR ¶¶ 1.b (\$4,979-tax year 2010); 1.c (\$7,316-tax year 2009); 1.d (\$2,784-tax year 2008); 1.e (\$3,365-tax year 2007); and 1.f (\$4,261-tax year 2006) are for delinquent taxes. These are tax debts owed on Applicant's wife's income from gambling that she failed to tell him about or provide him with the IRS W-2 forms. He has an installment agreement with the IRS and pays \$500 monthly. His current cumulative balance owed is approximately \$16,000. He has been making consistent payments.³

The medical debt in SOR ¶ 1.g (\$188) Applicant indicated he paid in 2013, and it is no longer on his current credit reports.⁴ Applicant disputed the debt for an automobile account in SOR ¶ 1.h (\$109). He provided a supporting document showing that he has the title to the vehicle in question. The debt is resolved.⁵ Applicant disputed the credit card debt in SOR ¶ 1.i (\$5,560) indicating that he paid the company that purchased the delinquent account a lump sum payment from his 401(k) account. He disclosed the account on his security clearance application and indicated he paid the collection company. The credit reports indicate the account was purchased by another lender. There is no collection account listed in the credit reports from a new lender showing the account is delinquent. Applicant intended to dispute the account on his credit report. The debt is resolved.⁶

¹ Response to FORM.

² Item 1.

³ Item 1 at pages 6-9. The documents provided support payment of taxes owed for 2006 and 2007. The installment agreement payments are for tax years 2008, 2009 and 2010. Response to FORM.

⁴ Items 1, 4, 5, 6.

⁵ Item 1 at pages 3, 28.

⁶ Items 1, 2, 3, 4, 5, 6.

Applicant indicated that his wife is now retired from her job in education. He has spent more than 44 years working in support of the DOD. He understands his finances became an issue when his wife started gambling. She no longer gambles. He has never gambled. They live within their means. Except for the installment agreement with the IRS, all of their debts are paid.

Policies

When evaluating an applicant's suitability for a security clearance, the 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, these guidelines are applied 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 an applicant may deliberately or inadvertently fail to 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 guideline notes several conditions that could raise security concerns. I have considered the following under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated delinquent debts over several years, including federal income taxes, because of his wife’s gambling habit. I find the above disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;
- (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;

(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;

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

(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.

Applicant attributed his financial problems to his wife's gambling habit. He has resolved all of the SOR-listed debts, except his tax debt, which is being paid through an installment agreement. AG ¶ 20(a) does not apply because Applicant is still resolving his delinquent tax debt.

Applicant's wife's gambling was the cause of his financial problems and was a condition beyond his control. For the full application of AG ¶ 20(b), there must be evidence that Applicant acted responsibly under the circumstances. Applicant's wife handled the family's finances. He was unaware there was a problem until his mortgage lender contacted him about his delinquent mortgage payments. Applicant and his wife attended counseling, and he believed at the time his wife's gambling problem was resolved. He wanted to trust her so he continued allowing her to handle the finances. Although this may have been naïve, it is understandable considering their many years of marriage. However, he was on notice when the IRS contacted him about the failure to declare his wife's gambling winnings in his taxes. His wife lied to him about her gambling, and Applicant should have been more assertive in monitoring his finances once notified by the IRS. He eventually took over managing all of their finances and resolved all of the delinquent debts, except his past-due taxes that he is paying through an installment agreement. I find Applicant acted responsibly under the circumstances, and AG ¶ 20(b) applies.

Applicant's home was foreclosed and he received pertinent tax documents that he filed with his tax returns. He has an installment agreement with the IRS to resolve the remaining taxes owed. He provided a copy of the title to a car proving the debt alleged was resolved. He disputed the remaining debts indicating he had paid and resolved them with money from his 401(k), and they are not on his current credit reports. Applicant and his wife attend counseling to address their compulsive behavior problems. Applicant's financial problems are being resolved and are under control. He made good-faith efforts to repay his creditors and is resolving his debts. I find AG ¶¶ 20(c) and 20(d) apply. Applicant disputed some debts. I find there is sufficient evidence to conclude the legitimacy of the disputes and the debts are no longer on his credit reports. With regard to the credit card debt he disputed and said was paid, the debt is shown as sold and there is no collection account listed on the credit report. I find Applicant's statements credible. AG ¶ 20(e) applies.

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 the 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. I have incorporated my comments under Guideline F 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 66 years old. He has spent his entire adult life working for the DOD. He admitted he was a workaholic, and his wife was going through a stressful period when she became addicted to gambling, which caused their financial problems. He resolved the delinquent debts, except for a remaining installment agreement with the IRS. Applicant and his wife attend counseling to address their compulsive behavior problems. He manages their finances. After considering the whole person, I find there is sufficient evidence of mitigation, and Applicant has met his burden of persuasion. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline F, financial considerations.

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
Subparagraphs 1.a-1.i:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge