

DATE: May 9, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0527

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Matthew E. Malone, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Fifty-two year old Applicant's continuing history of not meeting her financial obligations, including long-standing accounts charged off or sent to collection; a lengthy pattern of criminal activity, including the issuance of bad checks on accounts which were either overdrawn or closed, embezzlement of a check from her employer and her attempt to cash it; and her deliberate falsification on an SF 86 of relevant and material facts pertaining to her past personal conduct, criminal conduct, and financial actions, raises grave questions and doubts as to her security eligibility and suitability. Clearance is denied.

STATEMENT OF THE CASE

On September 29, 2000, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, "*Safeguarding Classified Information Within Industry*", dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, "*Defense Industrial Personnel Security Clearance Review Program*" (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated October 24, 2000, [\(U\)](#) Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was initially assigned to Administrative Judge Elizabeth M. Matchinski on December 15, 2000, but, due to caseload considerations, was subsequently reassigned to, and received by, this Administrative Judge on January 2, 2001. A notice of hearing was issued on January 8, 2001, and the hearing was held before me on February 13, 2001. During the course of the hearing, 13 Government exhibits, and two Applicant exhibits, along with the testimony of one Applicant witness (the Applicant), were received. The transcript (Tr.) was received on February 22, 2001.

RULINGS ON PROCEDURE

During the proceeding, Department Counsel moved to amend the SOR to conform to correct clerical errors therein. Specifically, he sought to amend the following subparagraphs:

- In subparagraph 1.h., delete that portion of the sentence appearing after the word "checks" and substitute therefor the following: ", as follows:
 - (1) That information as set forth in subparagraph 2.a., below;
 - (2) That information as set forth in subparagraph 2.b., below;
 - (3) That information as set forth in subparagraph 2.c., below;
 - (4) That information as set forth in subparagraph 2.d., below."
- In subparagraph 2.e., third line, delete the number "22." and substitute therefor the number "20."

There being no objection by Applicant, the motions were granted, and the SOR was amended as described above.

FINDINGS OF FACT

Applicant has admitted most of the factual allegations pertaining to financial matters under Guideline F (subparagraphs 1.a. through 1.g., and portions of 1.h.); and some of the factual allegations pertaining to criminal conduct under Guideline J (subparagraphs 2.a., 2.b., and a portion of 2.d.). Those admissions are incorporated herein as findings of fact. She denied the remaining factual allegations pertaining to financial matters, criminal conduct, as well as personal conduct under Guideline E (paragraph 3).

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 52 year old female employed by a defense contractor, and she is seeking to retain the CONFIDENTIAL security clearance which was previously granted to her. In 1979, she was granted a SECRET security clearance.

Applicant has been financially overextended since the early 1980s, when she first wrote a string of checks which were subsequently returned because of "insufficient funds" or "account closed." Since that time, she has been arrested for attempting to cash a check which she had previously stolen from her employer, and for issuing another bad check. Those actions were accompanied by her demonstrated history of not meeting her financial obligations. Because of her failure to address those financial obligations in a timely fashion, a substantial number of her creditors referred the overdue accounts to collection or simply charged them off, or in one instance, obtained a judgment against her.

Applicant owes an outstanding balance of approximately \$2,037.00 to a bank (identified in the SOR in subparagraph 1.a.) for a bad debt, described as an unpaid credit card. A report of credit, dated May 25, 1999, ⁽²⁾ seemingly confirmed the nature of the debt but disputed the amount of the unpaid balance. ⁽³⁾ During the hearing, Applicant acknowledged she had not yet made any effort to contact the creditor to make any payment arrangements, nor had she made any payments. ⁽⁴⁾

Applicant is indebted to a finance company, representing a bank (both of which are identified in the SOR in subparagraph 1.b.) in the amount of approximately \$9,779.00, for a bad debt, not further described, which was referred to the collection agency on an unspecified date prior to May 1999. The May 1999 report of credit seemingly confirmed the nature of the debt but disputed the amount of the unpaid balance. ⁽⁵⁾ During the hearing, Applicant stated she had discussed possible payment arrangements with the finance company several months

earlier, but they were only willing to accept a reduced amount contingent upon payment by the following day. Since she was unable to come up with the necessary funds within the time prescribed, the potential arrangements fell through.⁽⁶⁾ Applicant has not made any payments on this account.⁽⁷⁾

Applicant is indebted to a bank (identified in the SOR in subparagraph 1.c.) in the amount of approximately \$343.00, for a bad debt, described as a line of credit, which was charged off prior to May 1999. The May 1999 report of credit confirmed both the nature of the debt and the amount of the unpaid balance. Applicant has admitted the accuracy of the amount and unpaid status of the obligation. Furthermore, she acknowledged she has made no effort to contact the creditor,⁽⁸⁾ and has made no payments.⁽⁹⁾

Applicant is indebted to a telephone collection agency, (identified in the SOR in subparagraph 1.d.) in the amount of approximately \$181.00, for a bad debt, described as telephone service, which was referred for collection prior to May 1999. The May 1999 report of credit confirmed both the nature of the debt and the amount of the unpaid balance. Applicant has admitted the accuracy of the amount and unpaid status of the six year old obligation. Despite her August 1999, and October 24, 2000, promises to pay the account,⁽¹⁰⁾ she made no effort to do so until February 10, 2001--just three days prior to the hearing--when she paid the creditor \$80.00.⁽¹¹⁾ At the hearing, she vowed to pay the entire balance "within the next couple of weeks."⁽¹²⁾

Applicant is indebted to a grocery store, (identified in the SOR in subparagraph 1.e.) in the amount of approximately \$58.00, for a bad debt, not further described, which was referred for collection prior to May 1999. The May 1999 report of credit confirmed both the nature of the debt and the amount of the unpaid balance. Applicant has admitted the accuracy of the amount and unpaid status of the six year old obligation. Despite her August 1999 and October 24, 2000, promises to pay the account,⁽¹³⁾ she made no effort to do so until February 10, 2001--just three days prior to the hearing--when she paid the creditor the entire \$58.00 balance.⁽¹⁴⁾

Applicant is indebted to a department store (identified in the SOR in subparagraph 1.f.) in the amounts of approximately \$625.00 and \$202.00, for two bad debts, described as revolving charge cards both of which were charged off prior to May 1999. The May 1999 report of credit confirmed both the nature of the debts and the amounts of the unpaid balances. Applicant has admitted the accuracy of the amounts and unpaid status of the obligations. Despite her repeated promises to follow up on the obligations, she has made no effort to contact the creditor to make payment arrangements, and has made no payments.⁽¹⁵⁾

Applicant is indebted to a department store (identified in the SOR in subparagraph 1.g.) in the amount of approximately \$279.00, for a bad debt, described as a revolving charge card which was charged off prior to May 1999. The May 1999 report of credit confirmed both the nature of the debt and the amount of the unpaid balance. Applicant has admitted the accuracy of the amounts and unpaid status of the obligation. Despite her repeated promises to follow up on the obligation, she has made no effort to contact the creditor to make payment arrangements, and has made no payments.⁽¹⁶⁾

In August 1983, Applicant cashed a check in the amount of \$35.00 on an account which had previously been closed. The bank made several attempts to reach her, both by telephone and in writing, in order to collect the amount, but she failed to respond to those attempts.⁽¹⁷⁾ On October 4, 1983, the bank filed a complaint with the local police authorities.⁽¹⁸⁾ The eventual disposition of the matter has not been described.

During September-October 1983, Applicant wrote four separate checks to her landlord, in the total amount of \$1,350.00, for damage deposit and rent for an apartment she had rented. All four checks were subsequently returned, marked "account closed."⁽¹⁹⁾ During the same time period, Applicant wrote two additional checks, including one to a department store, both of which were also returned for having been written on a closed account.⁽²⁰⁾ On October 25, 1983, Applicant was arrested and charged with five counts of Violation of Banking Laws (all felonies). On November 9, 1983, upon her plea of *Nolo Contendere* to one count, she was fined, and the remaining four felonies were dismissed.⁽²¹⁾

In August 1984, while in the process of purchasing an automobile, and after her loan had been approved, Applicant issued a check, in the amount of \$1,400.00, as a down payment, to an automobile dealership, and drove away with her purchase. The check was eventually returned for "insufficient funds."⁽²²⁾ Despite attempts by the dealership personnel to have her return and rectify the problem, she refused to do so and was eventually personally served with a summons⁽²³⁾ and charged with Uttering Fraudulent Checks Over \$100.00, a felony.⁽²⁴⁾ Applicant subsequently failed to appear for arraignment and a warrant was issued for her arrest.⁽²⁵⁾ Fourteen years later, in 1999, Applicant finally returned to court. The charge was dismissed on August 25, 1999: "After contacting both . . . dealership & the . . . Credit Union, the State is without sufficient evidence to proceed in this case at this time."⁽²⁶⁾

In February 1994, while working as a bookkeeper, Applicant received a check from a customer of her employer, in the amount of \$500.00. Instead of properly processing the check to the account of her employer, Applicant embezzled the check and attempted to cash it.⁽²⁷⁾ She was unsuccessful. Applicant was arrested at the bank and charged with Forgery,⁽²⁸⁾ a felony.⁽²⁹⁾ Applicant was convicted of the charge, as reduced to a misdemeanor offense, sentenced to 36 months of probation, entered into a work-release program, ordered to pay restitution and fees, and imprisoned for five days in the county jail.⁽³⁰⁾

Applicant attributed her overall financial condition and criminal activities to a variety of contributing factors: she was a single parent with two children and little child support;⁽³¹⁾ she needed rent money;⁽³²⁾ she had to cover previously issued bad checks;⁽³³⁾ she failed to have her mail forwarded and was unaware of her bills;⁽³⁴⁾ she was unemployed for a long time;⁽³⁵⁾ and her daughter went through a divorce shortly after her grandson was born and they needed money to live.⁽³⁶⁾

On March 8, 1999, Applicant completed her Questionnaire for National Security Positions (SF 86),⁽³⁷⁾ and in response to an inquiry pertaining to her employment record and whether she had during the previous 10 years ever been fired from a job or left a job under a variety of unfavorable circumstances,⁽³⁸⁾ Applicant responded "no." She certified that her response was true, complete, and accurate. It was false. She had omitted and concealed the truth regarding her termination in 1997 for incompetence,⁽³⁹⁾ a termination which fell within the purview of the inquiry.

Applicant subsequently denied intending to deceive, and explained that she had been wrongfully terminated,⁽⁴⁰⁾ and supported her contention with a Board of Review Decision of Referee from the State Department of Labor & Training,⁽⁴¹⁾ made pursuant to the State Employment Security Act, which affirmed the earlier decision that Applicant had been "discharged but not for the reasons of misconduct in connection with the work."⁽⁴²⁾ She added that she simply put the unpleasant experience out of her mind and did not think about it when she was completing the SF 86. Nevertheless, despite the alleged wrongful termination, Applicant was, in fact, fired from her job.

In completing her SF 86, Applicant also responded to an inquiry pertaining to financial delinquencies of 180 days during the past seven years ("In the last 7 years, have you ever been over 180 days delinquent on any debt(s)?").⁽⁴³⁾ Applicant responded "no" to the question. She certified that her response was true, complete, and accurate. It was false. She had omitted and concealed the truth regarding a number of outstanding financial obligations which fell within that category, as described above.

Applicant subsequently denied intending to deceive, and explained that she knew she had debts but did not have enough information about those debts.⁽⁴⁴⁾ She also stated that she did not have very much time to complete the SF 86.⁽⁴⁵⁾ Applicant agreed that upon reviewing the response it was erroneous and the answer should have been "yes."⁽⁴⁶⁾

In completing her SF 86, Applicant also responded to an inquiry pertaining to her police record and any felony

offenses for which she may have been charged or convicted ("Have you ever been charged with or convicted of any felony offense?").⁽⁴⁷⁾ Applicant responded "no" to the question. She certified that her response was true, complete, and accurate. It was false. She had omitted and concealed the truth regarding the three felony charges which fell within that category, as described above.

In her Response to SOR, Applicant denied intending to deceive, and explained that she had misunderstood the question.⁽⁴⁸⁾ That explanation was, however, at variance with her earlier admission she had not listed the felony forgery charge in 1994 because "it would be grounds for denial of the clearance."⁽⁴⁹⁾

Applicant has been employed by the same company since October 1998, while also holding a second part-time job since April 1996. The quality of her performance has been characterized in the following glowing terms: exemplary, highly professional, exceptional resourcefulness and initiative, highest caliber of leadership, and very good judgment, and her overall performance rating has been "exceeds job requirements."

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An Administrative Judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E2.2., Enclosure 2, of the Directive, are intended to assist the Administrative Judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an Administrative Judge should consider are: (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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

[Guideline F - Financial Considerations]: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

Conditions that could raise a security concern and may be disqualifying include:

- (1) a history of not meeting financial obligations;
- (2) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (3) inability or unwillingness to satisfy debts;

Conditions that could mitigate security concerns include:

None apply.

[Criminal Conduct - Guideline J]: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Conditions that could raise a security concern and may be disqualifying include:

- (1) allegations or admission of criminal conduct, regardless of whether the person was formally charged;
- (2) a single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

None apply.

[Personal Conduct - Guideline E]: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying also include:

- (1) reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances;
- (2) the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;
- (5) a pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency.

Conditions that could mitigate security concerns include:

None apply.

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the standard the issuance of the clearance is "clearly consistent with the interests of national security," [\(50\)](#) or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded both standards are one and the same. In reaching this Decision, I have endeavored to draw only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have attempted to avoid drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the Government to establish a case which demonstrates, in accordance with the Directive, it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the Government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the Government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an 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.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of

Executive Order 10865 specifically provides industrial security clearance 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." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of the witness credibility, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to Guideline F, the Government has established its case. Applicant has a lengthy history of not meeting her financial obligations; deceptive and illegal financial practices, including uttering bad checks (on accounts which were either overdrawn or closed), theft, and forgery; as well as an inability or unwillingness to satisfy her debts. When initially confronted with a list of her outstanding financial obligations in August 1999, she repeatedly promised to contact her creditors and enter into payment arrangements with them. With two exceptions--only three days prior to the hearing--she made no effort whatsoever to contact her creditors.

Applicant has shown little positive action on her assertions or pledges, and still has outstanding financial obligations to two banks (subparagraphs 1.a. and 1.c.); a finance company representing a bank (subparagraph 1.b.); a telephone collection agency (subparagraph 1.d.); and two department stores (subparagraphs 1.f. and 1.g.). In light of Applicant's criminal activities related to the uttering of bad checks and the theft of a check and forgery, as well as in the absence of confirmed payment arrangements on her legitimate accounts, or actual payments diminishing those outstanding financial obligations, Applicant's overall conduct pertaining to her financial obligations clearly falls within Financial Considerations Disqualifying Condition (DC) E2.A6.1.2.1., DC E2.A6.1.2.2., and DC E2.A6.1.2.3.

Applicant attributed her overall financial condition, and attempted to justify her criminal activities, to a variety of contributing factors: she was a single parent with two children and little child support; she needed rent money; she had to cover previously issued bad checks; she failed to have her mail forwarded and was unaware of her bills; she was unemployed for a long time; and her daughter went through a divorce shortly after her grandson was born and they needed money to live. Those factors do not justify Applicant's actions. Under the circumstances herein, I believe Applicant has failed to mitigate or overcome the Government's case, for the evidence leaves me with grave questions and doubts as to Applicant's continued security eligibility and suitability. Accordingly, allegations 1.a. through 1.c., 1.f., 1.g., and 1.h., of the SOR are concluded against Applicant.

Only two debts have either been fully or partially satisfied by Applicant's positive efforts to do so: a partial payment to a telephone collection agency (subparagraph 1.d.) and a complete satisfaction of a debt to a grocery store (subparagraph 1.e.), both payments having been made in February 2001. While I do not consider those payments to be timely, I, nevertheless, acknowledge the favorable aspect of them. Thus, I conclude that Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the Government's case with respect to this aspect of her financial delinquencies. Accordingly, allegations 1.d., and 1.e., of the SOR are concluded in favor of Applicant.

With respect to Guideline J, the Government has established its case. Applicant has a lengthy pattern of criminal conduct commencing in 1983 and continuing until March 1999. That conduct involved the repeated uttering of bad checks on accounts which were either closed or had insufficient funds. Despite being arrested and charged by the authorities, and paying fines, Applicant apparently learned nothing positive from her criminal past, has displayed no remorse, and for unexplained reasons never turned herself around through successful rehabilitation. Instead, 10 years later, at about the time one might have considered putting the past misconduct behind her, Applicant's criminal activity started anew when, as a bookkeeper, she embezzled a check from her employer and was caught attempting to cash it. That criminal conduct clearly falls within Criminal Conduct DC E2.A10.1.2.1. and DC E2.A10.1.2.2.

Applicant's falsifications on her SF 86 in March 1999 were merely the most recent elements of her criminal history. Statements made by an applicant for access to classified information encompass matters within the jurisdiction of the Department of Defense, as provided for under Title 18, United States Code, Section 1001. Applicant's explanation for failing to accurately relate her employment record, police record, and financial delinquencies, simply will not justify or exonerate such action. Moreover, in a moment of candor, Applicant admitted she had lied regarding her 1994 felony forgery charge because "it would be grounds for denial of the clearance." I conclude, therefore, that Applicant's felonious conduct--misrepresentation, falsification, omission, and concealment (deception) of those areas of her past, was material and made in a knowing and willful manner in contravention of Title 18, United States Code, Section 1001. That criminal conduct also clearly falls within DC

E2.A10.1.2.1.

While a person should not be held forever accountable for misconduct from the past, without a clear indication of subsequent reform, remorse, or rehabilitation, I am unable to determine with reasonable certainty the probability that such conduct will not recur in the future. Without more, I simply do not believe the period of time from the most recent segment of her criminal conduct to the closing of the record, is sufficient to persuade me recurrence of such criminal conduct is unlikely. To the contrary, given Applicant's lengthy and recent pattern of criminal conduct, I have little evidence of rehabilitation. Consequently, I conclude that Applicant has failed to mitigate or overcome the Government's case. Accordingly, allegations 2.a. through 2.h. of the SOR are concluded against Applicant.

With respect to Guideline E, the Government has established its case. Examination of Applicant's personal conduct, criminal conduct, and financial actions reveals questionable judgment, untrustworthiness, and unreliability. She incurred debts and walked away from them. Knowing she had no money in some checking accounts or had already closed those accounts, she nevertheless wrote checks on those accounts. Entrusted by her employer to safeguard company assets, she stole a check from her employer and tried to cash it. Questioned as to certain facts on an SF 86, Applicant willfully falsified, omitted, or concealed material facts. Her overall lack of candor, criminal conduct, pattern of dishonesty, and personal misconduct clearly fall within Personal Conduct DC E2.A5.1.2.1., DC E2.A5.1.2.2., and DC E2.A5.1.2.5.

Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate, meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. The nature of Applicant's actions and activities therefore pose a serious potential risk to the nation's security precautions which go to the very heart of the nation's security system. An applicant's responsibilities associated with the granting of a security clearance are considerable in terms of protecting the national security and in maintaining appropriate personal conduct. Along with the responsibilities is accountability. In this instance, Applicant is now accountable for those past actions and activities. In this instance, I believe Applicant has failed to mitigate or overcome the Government's case, for the evidence leaves me with grave questions and doubts as to Applicant's continued security eligibility and suitability. Accordingly, allegation 3.a., 3.b., and 3.d. of the SOR are concluded against Applicant.

Although Applicant had been terminated from one employer for alleged "incompetence," the subsequent actions by the Board of Review from the State Department of Labor & Training, made pursuant to the State Employment Security Act, affirmed an earlier decision that Applicant had been "discharged but not for the reasons of misconduct in connection with the work." In the absence of evidence to rebut Applicant's contentions in this matter, I conclude that Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the Government's case with respect to this allegation. Accordingly, allegation 3.c. of the SOR is concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is not eligible 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: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Paragraph 2. Guideline J: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Subparagraph 2.d.: Against the Applicant

Subparagraph 2.e.: Against the Applicant

Subparagraph 2.f.: Against the Applicant

Subparagraph 2.g.: Against the Applicant

Subparagraph 2.h.: Against the Applicant

Paragraph 3. Guideline E: AGAINST THE APPLICANT

Subparagraph 3.a.: Against the Applicant

Subparagraph 3.b.: Against the Applicant

Subparagraph 3.c.: For the Applicant

Subparagraph 3.d.: Against the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Robert Robinson Gales

Chief Administrative Judge

1. The Response to SOR was notarized on October 25, 2000.

2. *See* Government Exhibit 3 (TRW-Experian Report of Credit, dated May 25, 1999), at 4.

3. The balance reflected on the report of credit for this particular account was \$1,266.00, with the last action having been taken identified as "charge off," on an unspecified date. The \$1,266.00 is reflected as the "balance," with \$173.00 of that total identified as the amount "past due." It is unclear how the \$2,037.00 alleged in the SOR became the amount in issue. *See ibid.* Nevertheless, despite Applicant's initial denial of any knowledge regarding the account during her interview with a special agent of the Defense Security Service (DSS) in August 1999 (*see* Government Exhibit 13 (Statement, dated August 30, 1999), at 1), she subsequently admitted the allegation. *See* Response to SOR, *supra* note 1, at 1.

4. *See Tr.*, at 46.

5. The balance reflected on the report of credit for this particular account was \$9,140.00, with the last action having been taken identified as "collection dept/agcy," on an unspecified date. The \$9,140.00 is reflected as both the "balance" and the amount "past due." It is unclear how the \$9,779.00 alleged in the SOR became the amount in issue. *See* Government Exhibit 3, *supra* note 2. Nevertheless, despite Applicant's initial denial of any knowledge regarding the account during her interview with the DSS special agent in August 1999 (*see* Government Exhibit 13, *supra* note 3, at 1), she subsequently admitted the allegation. *See* Response to SOR, *supra* note 1, at 1 and 4.

6. *Id.*, Response to SOR, at 4.

7. *See Tr.*, at 47.

8. *See Tr.* at 48.

9. *Ibid.*

10. *See* Government Exhibit 13, *supra* note 2, at 2. *Also see* Response to SOR, *supra* note 1, at 1, wherein she promised to make her payment on October 27, 2000.

11. *See* Applicant Exhibit A (Photocopies of two Western Union Money Orders, dated February 10, 2001). *Also see* *Tr.*, at 48.

12. *See Tr.*, *ibid.*

13. *See* Government Exhibit 13, *supra* note 2, at 2. *Also see* Response to SOR, *supra* note 1, at 1, wherein she promised to make her payment on October 29, 2000.

14. *See* Applicant Exhibit A, *supra* note 11. *Also see* *Tr.*, at 49-50.

15. *See Tr.*, *id.*, at 50.

16. *Ibid.*

17. *See* Government Exhibit 4 (letter from creditor, dated September 13, 1983).

18. *See* Government Exhibit 5 (Police Complaint Report, dated October 4, 1983).

19. *See* Government Exhibit 6 (Police Complaint Report, dated October 22, 1983).

20. *See* Government Exhibit 12 (Statement, dated July 19, 1999), at 1.

21. *See* Government Exhibit 6, *supra* note 19, at 3. It should be noted that the Police Arrest Report Listing indicates there were five counts charged, while the SOR referred to only four counts.

22. *See* Government Exhibit 8 (Police Narrative, dated October 10, 1984). *Also see* Government Exhibit 10 (Letter from Credit Union, dated September 27, 1984).

23. *See* Government Exhibit 9 (Witness Statement, dated September 21, 1984), at 3. In her sworn statement of July 1999 (Government Exhibit 12), at 1, Applicant denied ever receiving a summons to appear. That statement is directly refuted by the contemporaneous statement of the police detective who served her.

24. *See* Government Exhibit 7 (Court Records, dated March 6, 1985), at 4 and 6.

25. *Ibid.*

26. *Id.*, at 8.

27. *See* Government Exhibit 12, *supra* note 20, at 2.

28. *See* Government Exhibit 11 (Sheriff's Department Booking and Property Record, dated February 24, 1994), at 1.

29. *See* Tr., at 42.

30. *See* Government Exhibit 11, *supra* note 28, at 5-6.

31. *See* Response to SOR, *supra* note 1, at 3.

32. *See* Government Exhibit 12, *supra* note 20, at 2.

33. *Ibid.*

34. *See* Response to SOR, *supra* note 1, at 3.

35. *Ibid.*

36. *Id.*, at 5.

37. *See* Government Exhibit 1 (Security Clearance Application, dated March 8, 1999), incorrectly alleged in the SOR as having been executed by Applicant on March 11, 1999.

38. Question 20.

39. *See* Government Exhibit 13, *supra* note 2, at 1.

40. *See* Response to SOR, *supra* note 1, at 6.

41. *See* Attachment (Decision of Referee, dated August 7, 1997) to Response to SOR, *id.*, at 3.

42. *Ibid.*

43. Question 38.

44. *See* Tr., at 39-40.

45. *Id.*, at 40.

46. *Id.*, at 39.

47. Question 21.

48. *See* Response to SOR, *supra* note 1, at 2.

49. *See* Government Exhibit 12, *supra* note 20, at 2.

50. *See* Executive Order 12968, "*Access to Classified Information*;" as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995, and further modified by memorandum, dated November 10, 1998. However, the Directive, as amended by Change 4, dated April 20, 1999, uses both "clearly consistent with the national interest" (*see* Sec. 2.3.; Sec.2.5.3.; Sec. 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.; Sec. E3.1.26.; and Sec. E3.1.27.), and "clearly consistent with the interests of national security" (*see* Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (*see* Enclosure 2, Sec. E2.2.2.)

