

DATE: March 13, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0555

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Thirty year old Applicant's continuing history of not meeting his financial obligations, including long-standing accounts charged off or sent to collection, and the ensuing liens, judgments, and garnishments, despite an apparent ability or proclaimed willingness and intent to satisfy them, accompanied by his subsequent failure to do so, with few exceptions, mostly made upon receipt of the SOR, raises grave questions and doubts as to his security eligibility and suitability. Clearance is denied.

STATEMENT OF THE CASE

On October 3, 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 November 13, 2000, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was initially assigned to Administrative Judge John G. Metz, Jr. on January 5, 2001, but, due to caseload considerations, was subsequently reassigned to, and received by, this Administrative Judge on that same date. A notice of hearing was issued on January 8, 2001, and the hearing was held before me on January 22, 2001. During the course of the hearing, four Government exhibits and one Applicant exhibit, and the testimony of one Applicant witness (the Applicant), were received. The transcript (Tr.) was received on February 8, 2001.

FINDINGS OF FACT

Applicant has admitted all but one of the factual allegations pertaining to financial matters under Guideline F. Those

admissions are incorporated herein as findings of fact. He denied subparagraph 1.j.

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 30 year old male employed by a defense contractor, and he is seeking to obtain a SECRET security clearance.

Applicant has seemingly been financially overextended since approximately 1990, and as a consequence, has demonstrated a history of not meeting his financial obligations. He has had automobiles repossessed in about 1990, shortly after he graduated from high school; in about 1992; and again in 1997.⁽¹⁾ In addition, because of his failure to address his financial obligations in a timely fashion, a number of his other creditors obtained liens, judgments, or garnishments, while still others referred the overdue accounts to collection or simply charged them off.

Applicant has owed an outstanding balance of approximately \$400.00 to a former landlord (identified in the SOR in subparagraph 1.a.) for a bad debt, identified as unpaid rent,⁽²⁾ since approximately 1993. Prior to March 6, 2000, he had contacted the creditor to enter into payment arrangements,⁽³⁾ but as of the date of the closing of the record herein--approximately 10 months later--he had made no payments to this particular creditor.⁽⁴⁾

He is also indebted to a utility company (identified in the SOR in subparagraph 1.b.) in the amount of approximately \$359.00, for a bad debt, identified as unpaid telephone service,⁽⁵⁾ referred for collection in about April 1995. Although he admitted the obligation, when he finally took action to discuss the debt with the creditor in about November 2000, the creditor could not find any record of the debt.⁽⁶⁾ Accordingly, Applicant has not yet made any payment arrangements with the particular creditor.⁽⁷⁾

Applicant owed an unspecified outstanding balance to a hospital (identified in the SOR in subparagraph 1.c.) for professional services rendered since an unspecified time prior to early 1996. In February 1996, the creditor received a judgment, in the amount of \$42.50.⁽⁸⁾ On March 6, 2000, Applicant stated an intention to contact the creditor to make arrangements for payment of the outstanding judgment,⁽⁹⁾ but he did not do so for another seven months. He purportedly paid off the entire amount in October 2000,⁽¹⁰⁾ but could not substantiate his claim, despite having requested a receipt from the creditor.⁽¹¹⁾

Applicant also owed an outstanding balance of \$84.61 to another hospital (identified in the SOR in subparagraph 1.d.) for professional emergency room services rendered prior to February 1996, when the account was referred for collection. Although Applicant was reminded of this outstanding financial obligation in March 2000, he made no effort to resolve the matter for the next 10 months. Finally, in October 2000, Applicant paid off the entire balance with a money order.⁽¹²⁾ Payment was acknowledged by the collection agency on October 25, 2000.⁽¹³⁾

Applicant also owed an outstanding balance of \$81.00 to still another hospital (identified in the SOR in subparagraph 1.e.) for professional emergency room services rendered prior to February 1996, when the account was referred for collection. Although Applicant was reminded of this outstanding financial obligation in March 2000, he made no effort to resolve the matter for the next 10 months. Finally, in October 2000, Applicant paid off the entire balance.⁽¹⁴⁾ Payment was acknowledged by the collection agency on October 25, 2000.⁽¹⁵⁾

Applicant also owed an outstanding balance of \$4,416.00 to a finance company (identified in the SOR in subparagraph 1.f.) for the financing of his Nissan 300ZX, purchased in about August 1996.⁽¹⁶⁾ When Applicant could not maintain the payments, sometime in 1997, he opted to have the vehicle voluntarily repossessed.⁽¹⁷⁾ Unfortunately for Applicant, the repossession left a deficiency of about \$3,000.00, for which Applicant remained responsible.⁽¹⁸⁾ Although Applicant discussed the outstanding balance with an investigator from the Defense Security Service (DSS) in March 2000, he made no effort to resolve the matter for the next 10 months. Finally, in October 2000, Applicant contacted the creditor to enter into payment arrangements, and agreed to make a monthly payment of \$170.00⁽¹⁹⁾ towards the

outstanding balance. Applicant made one such payment in October 2000, but because he had other financial obligations, including an unexpected engine problem with his other automobile, he was unable to continue making his payments under the agreed schedule. (20) Applicant has made no other payments to the creditor since the one in October 2000, but he anticipates resuming the payments in February 2001. (21)

Applicant owed an outstanding balance of \$3,163.29 to a furniture store (identified in the SOR in subparagraph 1.g.) for furniture purchased prior to April 1997. In May 1997, the creditor received a judgment, in the amount of \$3,186.29 plus interest. (22) Applicant averred the judgment was eventually satisfied without further payment and further claimed he had received a satisfaction of judgment. (23) When he was unable to produce documentary evidence to support his contention the obligation had been resolved, he was afforded the opportunity to submit such evidence by facsimile to the Department Counsel, (24) but as of the date the record closed, nothing had been received.

Applicant owed an outstanding balance of \$729.60 to a landlord (identified in the SOR in subparagraph 1.h.) for a bad debt, identified as unpaid rent arising from a broken lease, (25) since prior to September 1997. In that month the creditor received a judgment, purportedly in the amount of \$729.60 (26)--an amount disputed by Applicant, and, for some unexplained reason, claimed by him to actually be \$2,000.00. (27) Finally, in October 2000, Applicant purportedly paid off the entire balance. (28) Payment for an unspecified account, in an unspecified amount, was acknowledged by the collection agency on October 16, 2000. (29)

Applicant also owed an outstanding balance, not otherwise specified by the Government, to his wife's anesthesiologist for professional services rendered in about October 1997. (30) At some point thereafter, the obligation was reduced to a judgment, and in early February 2000, Applicant was notified his credit union account (identified in the SOR in subparagraph 1.i.) had been frozen and the funds garnished until the judgment had been paid off. (31) Payment of approximately \$760.00 was purportedly satisfied when the funds were withdrawn from the account. (32) Applicant was unable to produce documentary evidence to support his contention the obligation had been resolved.

By his own admission, Applicant has been, or is currently, delinquent on a number of different accounts, including those alleged in the SOR. For example, he is delinquent: about \$985.00 on his credit card; (33) on child support (for his daughter by his former girlfriend to whom he informally pays \$100.00 per month) with his last payment being made in November 2000; (34) and on medical bills totaling about \$1,400.00. (35) He also has two current automobile payments of \$349.00 and \$318.00 per month for his 1996 Camry and 1997 Dodge Intrepid, respectively; (36) as well as a \$150.00 share of a larger mortgage payment on a residence he inherited from his grandmother.

The condition of Applicant's credit was much worse in the past, especially when he was in the military, and his bills followed him around. He had no financial counseling, and was unaware of the significance of keeping his accounts current. (37) Now, Applicant purportedly realizes the importance of paying his bills and has taken modest steps to rectify his difficulties. One week prior to the hearing, Applicant agreed with a debt consolidation agency to pay them \$268.00 each month to be distributed among his creditors. (38) No payments had yet been made at the time of the hearing. Applicant's current monthly net income is about \$2,300.00--down from \$3,400.00 described in March 2000 when his wife was employed. While it appears after monthly expenses, he will have a remainder estimated to be about \$600.00, (39) it is equally clear the amount will not be sufficient to make the required payments to each of his creditors.

Applicant initially claimed his wife has been "handling" his bills since they were married in 1996. (40) That system was put into practice because he was at sea for long periods of time, (41) but he has not been to sea for about two years. Applicant subsequently altered his explanation to state that he now "handles" some of the bills and she "handles" others. (42)

Applicant has been employed by the same company since January 1998. The quality of his performance has not been revealed.

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;
- (3) inability or unwillingness to satisfy debts;

Conditions that could mitigate security concerns include:

- (3) The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation);
- (4) The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;
- (6) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

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," ⁽⁴³⁾ 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 approximately one decade of financial difficulties exacerbated by: (1) a job which kept him at sea for long periods of time; (2) domestic difficulties at home, with his first wife; (3) a job-related injury; (4) failure to grasp the significance of paying his bills and maintaining good credit; (5) inattention to his bills and leaving the responsibility for them to his wife since 1996; and (6) the unemployment of his wife. That combination of circumstances eventually resulted in a number of accounts being charged off or sent to collection, and the ensuing liens, judgments, and garnishments.

Applicant is currently delinquent on a number of different accounts. Despite asserting in March 2000, he would contact the companies to work out payment arrangements; and pledging to eventually satisfying these debts, to the date of the closing of the record herein, essentially 10 months later, Applicant took little positive action on his assertion or pledge. His \$400.00 bad debt for unpaid rent remains unpaid. His \$359.00 bad debt for telephone service remains unpaid, although, in fairness to Applicant he finally attempted to make arrangements with the utility company which, after nearly six years, could no longer find the file. His \$4,416.00 automobile repossession deficiency remains largely unpaid, although Applicant made one payment of \$170.00, and failed to adhere to his payment plan thereafter. In addition, there are the other outstanding financial obligations which were not alleged in the SOR.

There are other alleged bad debts which Applicant contends he paid off, but when challenged to offer documentary proof to support his contentions, Applicant was unable to do so. His judgment for \$42.50, obtained by a hospital for professional services rendered, was supposedly satisfied in October 2000. The judgment for \$3,163.29, obtained by a furniture store for furniture purchased, was also supposedly satisfied. The garnishment resulting from the judgment for \$760.00 due his wife's anesthesiologist for professional services rendered, was supposedly satisfied at some point between February 2000 and the closing of the record.

And finally, there are those former outstanding financial obligations for which Applicant did provide documentary evidence to support his contentions that they had been fully satisfied. Applicant offered proof that, in October 2000, he had paid the \$84.61 and \$81.00 hospital bills and the \$729.60 judgment for the broken lease.

In the absence of confirmed payment arrangements, or actual payments diminishing the outstanding financial obligations, or even where there were confirmed payment arrangements--arrangements which were subsequently largely ignored, Applicant's overall conduct pertaining to his financial obligations clearly falls within Financial Considerations Disqualifying Condition (DC) E2.A6.1.2.1., and DC E2.A6.1.2.3.

Applicant's contention that some of his financial difficulties arose from conditions, over a protracted period, which were largely beyond his control--hospital emergencies, physical injury, domestic difficulties and resulting divorce, the need for a new or repaired automobile

engine, the need for a new automobile, or the loss of his wife's income--could be convincing grounds for possible mitigation, with further explanation as to their significance, but they overlook the realities of life. One must take appropriate steps to prepare for the unexpected, however small those steps may be. But Applicant's only efforts in this regard were to purchase expensive automobiles, break his leases, run up his credit card, and avoid his financial obligations to the degree his actions became a security concern. In this instance, it becomes difficult to apply Financial Considerations Mitigating Condition (MC) E2.A6.1.3.3.

Moreover, because of Applicant's inaction in settling only some of those financial difficulties, until October 2000--after receipt of the SOR and long after his pledge of arch 2000--it cannot be persuasively argued he had initiated a good-faith effort to do so, thus negating the applicability of MC E2.A6.1.3.6. Also, despite Applicant's contention that, one week prior to the hearing, he entered into an arrangement with a debt consolidation agency, there has been no evidence offered to address whether or not, as part of that arrangement, he is receiving counseling for handling finances. The absence of such evidence negates the applicability of MC E2.A6.1.3.4. Under these circumstances, 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.i., of the SOR are concluded against Applicant.

While Applicant's Personal Financial Statement, dated March 6, 2000, reflected a relatively small positive net monthly balance, that fact is of insubstantial security significance, and should not be argued as a factor against him. In this instance, no DC applies to such allegation. 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 his financial delinquencies. Accordingly, allegation 1.j. of the SOR is concluded in favor of Applicant. Also, because he has mitigated and overcome the Government's case with respect to those financial obligations which he had previously satisfied, allegations 1.d., 1.e., and 1.h., of the SOR are also 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.: For the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: For 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. *See* Government Exhibit 3 (Statement, dated March 6, 2000), at 2.

2. *Id.*, at 3.

3. *Ibid.*.

4. Tr., at 19.

5. *See* Government Exhibit 3, *supra* note 1, at 4.

6. Tr., at 23-24.

7. *Id.*, at 26.

8. *See* Government Exhibit 4 (Civil Hearing/Disposition, dated April 4, 2000), at 2.

9. *See* Government Exhibit 3, *supra* note 1, at 4.

10. Tr., at 26-27. It is interesting to note Applicant claims he also paid attorney fees in the amount of \$83.00, but the court record makes no mention of attorney fees being required.

11. *Id.*, at 33-34, and 72..

12. *Id.*, at 27.

13. *See* Letter from collection agency, dated October 25, 2000, attached to Response to SOR.

14. Tr., at 29.

15. *See* Applicant Exhibit A (Letter from collection agency, dated October 25, 2000).

16. *See* Government Exhibit 3, *supra* note 1, at 2.

17. *Ibid.*

18. *Ibid.*

19. Tr., at 35-36. *See also*, Letter from creditor, dated October 16, 2000, attached to Response to SOR.

20. *Id.*, at 35-37.

21. *Id.*, at 39.

22. *See* Government Exhibit 4 (Warrant in Debt, filed April 15, 1997), at 1. Despite having been served by the process server, Applicant, as the sole named defendant, failed to appear, and judgment was granted.

23. Tr., at 42.

24. *Id.*, at 74-75.

25. *Id.*, at 44.

26. *See* Government Exhibit 4 (Civil Hearing/Disposition, dated April 4, 2000), at 3.

27. *Ibid.*

28. Tr., at 44.

29. *See* Letter from collection agency, dated October 16, 2000, attached to Response to SOR. It should be noted that while Applicant claims the letter from the collection agency refers to this particular creditor, there is no independent indication the unspecified account mentioned in the letter actually refers to the creditor or account in question.

30. *See* Government Exhibit 3, *supra* note 1, at 2.

31. Tr., at 48.

32. *Id.*, at 48-49. *See also* Government Exhibit 3, *supra* note 1, at 3.

33. *Id.*, at 77. Applicant's balance is over the limit of his credit card. Additionally, he has charged medical expenses, furniture, jewelry, and gasoline to the credit card, and he has not made payments for the last seven months. In this regard, *see Id.*, at 59.

34. *See* Government Exhibit 3, *supra* note 1, at 5. *See also Id.*, at 59.

35. Tr., at 50-51.

36. *Id.*, at 52. The balance due for the Camry is approximately \$10,000.00, and the balance due for the Intrepid is less about \$8,000.00. In this regard *see Id.*, at 52 and 67.

37. *Id.*, at 88.

38. *Id.*, at 20-21.

39. *Id.*, at 80-82.

40. *Id.*, at 85. The exact question was: "Who's handling the bills now? And Applicant's response was: "My wife is handling the bills. . . . She's been handling them since we've been married."

41. *Id.*, at 86.

42. *Id.*, at 87.

43. *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.)