

DATE: August 31, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-2707

ECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Department Counsel

Arthur Elkins, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Thirty-eight year old Applicant's history of not meeting his financial obligations--attributed to his mismanagement of finances--though partially mitigated by eventually entering into payment arrangements with some creditors and subsequently making monthly payments of the agreed amounts motivated by the security clearance review process, and his continuing refusal to satisfy two outstanding debts associated with a purchase of a vacation home time-share, contending, without evidence to support his contention, that the debts were not legitimate, raises grave questions and doubts as to his security eligibility and suitability. Clearance is denied.

STATEMENT OF THE CASE

On March 22, 2001, 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 April 16, 2001, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was initially assigned to Administrative Judge John R. Erck on May 21, 2001, but due to caseload considerations, was reassigned to, and received by, this Administrative Judge on May 23, 2001. A notice of hearing was issued on May 25, 2001, amended on July 30, 2001, and the hearing was held before me on August 22, 2001. During the course of the hearing, six Government exhibits, and seven Applicant exhibits (including two which were submitted subsequent to the hearing but during the permitted period in which the record was kept open), and the

testimony of one Applicant witness (the Applicant), were received. The most recent transcript (Tr.) was received on August 31, 2001.

RULINGS ON PROCEDURE

The hearing was initially scheduled to commence on June 12, 2001. However, on the day prior to the scheduled date, I received a request for a continuance from Applicant averring his inability to be present as he was out of state attending to business. At the appointed time neither Applicant nor the court reporter was present, and the matter was postponed until the following day, when a brief status hearing was conducted. The matter was subsequently rescheduled for August 22, 2001.

FINDINGS OF FACT

Applicant has admitted only a portion of one factual allegation pertaining to financial matters under Guideline F (portion of subparagraph 1.a.). That admission is incorporated herein as a finding of fact. He denied subparagraphs 1.b. through 1.e., as well as the remaining portion of 1.a.

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 38 year old male employed by a defense contractor, and he is seeking to obtain a security clearance. He was previously granted a SECRET security clearance in February 1982.

Applicant has seemingly been financially overextended for a number of years, and as a consequence, demonstrated a history of not meeting all of his financial obligations in a timely fashion. Following his marriage in December 1991, he and his wife (now ex-wife, as they were divorced in September 1999) started experiencing financial difficulties due to their mismanagement. They developed too many consumer debts and were soon unable to keep up with their monthly payments.

Exacerbating their financial problems was Applicant's unemployment from August through November 1996 when his employer closed after it was consolidated with another company. When he obtained new employment in November 1996, his hourly salary was reduced from \$17.00 to \$10.00. He joined his current employer at an hourly salary of \$15.00, and currently earns \$21.70 per hour. Eventually he stopped making payments on his overdue accounts. As a result, various creditors referred the overdue accounts to collection or simply charged them off.

Following his separation and divorce, Applicant changed his financial behavior and practices. He no longer uses credit cards and has not incurred any new debts.

When Applicant was interviewed by a special agent of the Defense Security Service (DSS) on March 17, 2000, he described his delinquent accounts, totaling approximately \$23,374.00, what he had done, if anything, to arrange a payment schedule with his creditors, and the nature of his future plans regarding his past due balances. He stated he intended to contact all of his creditors to establish repayment agreements convenient to himself and the creditors, and indicated he was not in a position to satisfy the debts at that time.

Applicant is indebted to a large nationally known bank (identified in the SOR in subparagraph 1.a.) in the amount of approximately \$4,665.50, for a bad debt, described as a joint credit card account. He had opened the account in January 1993, and continued to routinely use the credit card and make payments on the balance until about December 1998. His failure to address that obligation resulted in the account being charged off. In September 1999, sole responsibility for the obligation was assigned to Applicant under a Mediation Agreement entered in the circuit court of the state in which Applicant resided at the time of his divorce.

Because of his continued inaction on the unpaid debt, he was subsequently sued by a successor in interest. In January 2001, motivated by the security clearance review process, he signed a Stipulation For Settlement, acknowledging an outstanding balance of \$6,471.00 (covering principal, interest, and costs), and agreeing to a repayment schedule of \$150.00 per month until the debt was satisfied. By the time the SOR was issued, his payments had reduced the

outstanding balance to approximately \$5,415.50. By the time of the hearing, that balance had been further reduced to approximately \$4,665.50.

Applicant is indebted to a collection company, representing another company which had acquired the delinquent account from a large nationally known speciality store (identified in the SOR in subparagraph 1.b.) in the amount of approximately \$2,566.79, for bad debt, described as a store credit card. He had opened the account when he purchased a computer in August 1996 while under the impression there was a 90 day "same-as-cash" grace period. Applicant contends there was some dispute over the payment schedule, but offered no supporting documentation. He attempted to make direct payments from his checking account towards reducing the balance, but discontinued those efforts because he "was advised not to give access to [his] account to anyone." Applicant made his last payment in August 1997. His failure to further address that obligation resulted in the account being sent to collection. In February 2001, again motivated by the security clearance review process, he entered into a payment agreement and schedule, agreeing to pay \$150.00 per month until the debt, by then totaling \$3,766.79, was satisfied. By the time the SOR was issued, his payments had reduced the outstanding balance to approximately \$3,466.79. By the time of the hearing, that balance had been further reduced to approximately \$3,016.79.

In September 1995, during a "troubled time" in his marriage relationship, Applicant and his wife purchased a vacation home time-share for approximately \$9,630.00. At the time of the purchase Applicant was to periodically pay an unspecified amount for the time-share and another unspecified amount to the homeowners association. At some point after the agreement was finalized, Applicant and his wife decided they did not wish to be bound by it and attempted, unsuccessfully, to void the agreement by paying a \$750.00 cancellation fee. They felt they had been pressured to enter into the agreement by "unethical high pressure tactics to force a time share sale." Applicant made some payments, not further described, and ceased doing so in about January 1997. His consultations with an attorney purportedly resulted in her advising him to ignore the creditors, but he has offered no evidence, testimonial or documentary, to support his contention that he was merely following legal advice.

Applicant has vowed not to pay either of the two accounts because he considers the sale a "fraudulent time-share sales scam." He claims the debts are not legitimate. His failure to further address those obligations resulted in the accounts being sent to collection. The time-share account was eventually resold to several other collection agencies, and it appears under several different creditors on the credit reports. Applicant is currently indebted to a collection agency (it is not clear which agency has the current interest in the delinquent account), representing the original time-share developer (identified in the SOR in subparagraph 1.d.) in the amount of approximately \$10,617.00, for bad debt, as described above. As far as the overdue obligation pertaining to homeowner association dues, as described above, is concerned, Applicant currently owes the creditor (identified in the SOR in subparagraph 1.c.) approximately \$257.00.

When Applicant completed his financial statement for DSS in March 2000, he reflected a monthly net negative remainder of approximately \$64.00. During the hearing, he submitted a revised financial statement, dated April 16, 2001, wherein the monthly net remainder had improved to a positive surplus of \$547.00.

Applicant has been employed by his current employer, a federal contractor, since August 1997. The quality of his performance has not been described. He was a member of the Army National Guard from September 1985 until August 1993, and attended the State National Guard Military Academy for one year as an officer candidate, receiving his diploma in August 1988. In 1992, he successfully completed a number of training course associated with fire protection and emergency medical services, and in 1993 he was recognized as the Firefighter of the Year by the local city Volunteer Fire Department.

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 turndown, unexpected medical emergency, or a death, divorce or separation);
- (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,"⁽¹⁾ 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's financial difficulties, attributed to mismanagement of the family finances, commencing after his marriage in December 1991, and exacerbated by his brief job loss and eventual reduced salary, continued until he was divorced in September 1999. They incurred too many consumer debts and fell behind in their monthly payments. Eventually he stopped making payments altogether. As a result, various creditors referred the overdue accounts to collection. Applicant continued to ignore his creditors until around the time the security clearance review process commenced, when he was finally motivated to take some action. Thus, his conduct pertaining to his financial obligations fell within Financial Considerations Disqualifying Condition (DC) E2.A6.1.2.1., and DC E2.A6.1.2.3.

Applicant's job-loss was relatively brief in duration and significantly aberrant in nature, bringing it within Financial Considerations Mitigating Conditions (MC) E2.A6.1.3.3. Moreover, his reduced salary for the period until his current employer boosted his salary over that which it had been before the lay-off is also recognized as coming within the same MC. Additionally, although he was largely motivated by the security clearance review process to take corrective action regarding two outstanding debts, he did enter into repayment agreements and commence making monthly payments to reduce the outstanding balances of those two debts. Those good faith efforts to repay some overdue creditors and otherwise resolve those debts clearly fall within MC E2.A6.1.3.6.

Applicant's finances are presently in good shape--a marked improvement over their status during his lengthy period of financial mismanagement. However, there still looms the overdue debts related to the time-share purchase agreement which he entered in September 1995. His actions with regard to those debts, his refusal to honor those financial commitments despite voluntarily entering into them, and the absence of any evidence to support his assertion they are not legitimate debts, all support the conclusion a financial problem continues to exist. Moreover, that problem is not the result of a condition beyond his control. 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 with respect to his financial considerations. Accordingly, allegations 1.c. and 1.d. of the SOR are concluded against Applicant.

On the other hand, with respect to the other two delinquencies--those on which he has entered into payment arrangements and already made substantial efforts at reducing those balances, as well as the issue regarding his monthly net remainder, I conclude that Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the Government's case. Accordingly, allegations 1.a. and 1.b. of the SOR are 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.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: 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* Executive Order 12,968, "*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.)