

DATE: February 7, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-01047

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Michael H. Leonard, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Forty-one year old Applicant with a lengthy history of not meeting his financial obligations, exacerbated by his steadfast refusal to attend to his finances during the pendency of his lengthy divorce or until the responsibility for those debts was assigned by the court, as well as his brief periods of unemployment and underemployment, continued to ignore his outstanding debts until long after his divorce was granted. While he accepted a part-time position in about October 2001 supposedly to generate money to be able to pay his bills, he also paid an attorney a retainer to file for bankruptcy, with a tentative target date of February 1, 2002. He has supposedly made some payments to three creditors while ignoring most of the others. Nevertheless, it appears he is merely making those payments to satisfy the security clearance review process, while his real goal is to avoid his outstanding debt obligations by the vehicle of bankruptcy. His actions raise grave questions and doubts as to his security eligibility and suitability. Clearance is denied.

STATEMENT OF THE CASE

On July 10, 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 August 3, 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 September 5, 2001, but due to caseload considerations, was reassigned to, and received by, this Administrative Judge on November 7, 2001. A notice of hearing was issued on November 28, 2001, and the hearing was held before me on December 5, 2001. During the course of the hearing, three Government exhibits, and two Applicant exhibits, and the testimony of one Applicant

witness (the Applicant), were received. The transcript (Tr.) was received on December 13, 2001.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to financial matters under Guideline F (subparagraphs 1.a. through 1.i.). Those admissions are incorporated herein as findings of fact.

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

Applicant was married in February 1981 and eventually divorced in March 2001. He had originally filed for divorce in 1993, but dropped the action upon learning of his wife's mental illness.⁽¹⁾ They subsequently separated in April 1995, and he eventually re-filed for divorce. The divorce proceeding dragged on for a substantial period,⁽²⁾ during which his first attorney passed away,⁽³⁾ and he was unwilling to address his outstanding financial obligations until the property issues were resolved by the divorce.⁽⁴⁾ As a result, he has 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.

While Applicant has attributed the majority of his financial problems to the actions of his ex-wife,⁽⁵⁾ and not to his own mismanagement of their finances, it appears his refusal to attend to his finances, as well as brief periods of unemployment and underemployment, may have exacerbated those problems. The first indication of financial difficulties began to arise in 1994, while he was still serving on active military duty. The problems only multiplied thereafter, especially after he was honorably discharged from active duty in April 1995. Following his discharge, Applicant remained unemployed for two months until he found employment for two months and then reverted to unemployment from August to October 1995. He has been consistently employed, with a number of employers, including his current employer (since January 1999)--a Government contractor--since October 1995.

By March 1999, the date of his credit report summary,⁽⁶⁾ Applicant's credit status was in a shambles. There were 17 accounts charged off or sent to collection, totaling approximately \$20,503.00, one lien or judgment, totaling \$193.00, and nine accounts, totaling approximately \$9,702.00, which were 120 days past due. In September 2000, Applicant considered filing for bankruptcy, but was determined to avoid it if possible.⁽⁷⁾ At the same time, he indicated an intention to seek counseling from the Consumer Credit Counseling Service (CCCS).⁽⁸⁾ In about October 2000, when he eventually sought their assistance, CCCS purportedly laughed at him, and he departed without obtaining any assistance.⁽⁹⁾

Applicant's refusal to address his outstanding financial obligations until the property issues were resolved by his divorce, accompanied by his relative inaction since the divorce, despite being made aware of which bills were his responsibility, has resulted in merely a delay of the inevitable. The final order and decree of divorce⁽¹⁰⁾ stipulated Applicant's responsibility towards paying child support (\$431.57 each month until she graduates from high school in June 2002),⁽¹¹⁾ permanent alimony (\$300.00 each month, commencing in June 2002, and continuing thereafter),⁽¹²⁾ an annuity contract arising from a personal injury claim by his ex-wife (\$32,500.00, to be paid at the rate of \$270.83 each month),⁽¹³⁾ and \$1,500.00 towards his ex-wife's attorney fees.⁽¹⁴⁾ In addition, according to what he was told by his attorney, his own attorney fees would continue to be his responsibility, as were all the remaining outstanding financial obligations.⁽¹⁵⁾ Accordingly, of the 12 outstanding financial obligations in the SOR, by early December 2001--10 months after the divorce was granted, and six months after the SOR was issued--Applicant had addressed only three such obligations.⁽¹⁶⁾

Aside from the debts appearing in the SOR, Applicant's current financial situation is "not good,"⁽¹⁷⁾ because of "too much indebtedness." He presently has a secure job and anticipates earning approximately \$31,000.00 in 2001.⁽¹⁸⁾ He has no credit cards, other than a bank card with Visa and ATM privileges,⁽¹⁹⁾ or department store charge cards, or even

gas cards. ⁽²⁰⁾ On the date of the hearing he estimated his checking account balance to be about \$400.00, ⁽²¹⁾ and his 401(k) balance to be about \$3,000.00. ⁽²²⁾ He now shares living expenses for the home with the person with whom he lives, ⁽²³⁾ and is living within his means, or "paycheck-to-paycheck." ⁽²⁴⁾ Despite being more attentive to his finances, on a couple of occasions he uttered "bad" checks. ⁽²⁵⁾ He has never sought the assistance of a financial planner or accountant. ⁽²⁶⁾

Applicant is sending mixed signals. While he accepted a part-time position selling appliances for a large national retail chain in about October 2001 to generate money to be able to pay his bills, ⁽²⁷⁾ he also paid an attorney a retainer to file for bankruptcy, with a tentative target date of February 1, 2002. ⁽²⁸⁾

As indicated above, as of the closing of the record in December 2001, Applicant still had a substantial number of unpaid financial obligations.

Applicant is indebted to a communications company (identified in the SOR in subparagraph 1.a.) in the amount of approximately \$308.00, for a bad debt, described as a joint cellular phone account he maintained with his ex-wife. He had opened the account in April 1995, and continued to routinely use it for one month. His failure to address that obligation resulted in the account being charged off. In March 2001, sole responsibility for the obligation was assigned to Applicant under the Final Order and Decree of Divorce entered in the family court of the state in which Applicant resided at the time of his divorce. By the time of the hearing, that balance had remained unchanged as Applicant had made no effort to address it.

Applicant is indebted to a jeweler (identified in the SOR in subparagraph 1.b.) in the amount of approximately \$590.00, for a bad debt, described as his ex-wife's purchase of jewelry before the divorce. He had opened the account, and the purchase was made, in May 1994. His failure to address that obligation resulted in the account being charged off. In March 2001, sole responsibility for the obligation was assigned to Applicant by the court. By the time of the hearing, that balance had remained unchanged as Applicant had made no effort to address it.

Applicant is indebted to a commercial finance company (identified in the SOR in subparagraph 1.c.) in the amount of approximately \$5,826.00, for a bad debt, described as a refinance for the residence they previously shared. The action occurred in October 1995, and as a result of difficulties in making payments, the residence was eventually turned back to the mortgage company. His failure to address that obligation resulted in the account being charged off. In March 2001, sole responsibility for the obligation was assigned to Applicant by the court. By the time of the hearing, that balance had remained unchanged as Applicant had made no effort to address it.

Applicant is indebted to a public works commission (identified in the SOR in subparagraph 1.d.) in the amount of approximately \$171.00, for a bad debt, described as water service for the residence he maintained with his ex-wife. He had opened the account in July 1995. In March 2001, sole responsibility for the obligation was assigned to Applicant by the court. By the time of the hearing, that balance had purportedly been reduced to about \$65.00 due to his periodic payments. Although offered the opportunity to submit proof of his payments, Applicant failed to do so.

Applicant is indebted to a national department store (identified in the SOR in subparagraph 1.e.) in the amount of approximately \$564.00, for a bad debt, not further described. They had opened the account in May 1988, and apparently continued to routinely use it thereafter. His failure to address that obligation resulted in the account being transferred or sold. In March 2001, sole responsibility for the obligation was assigned to Applicant by the court. By the time of the hearing, that balance had remained unchanged as Applicant had made little effort to address it. In fact, when he approached the creditor regarding payment arrangements, the creditor purportedly suggested he file for bankruptcy instead of trying to pay it off. ⁽²⁹⁾

Applicant is indebted to a national finance company (identified in the SOR in subparagraph 1.f.) in the amount of approximately \$665.00, for a bad debt, described as a cosigned personal loan purportedly incurred to pay off expenses for medical treatment received by his ex-wife. They took out the loan in May 1994. His failure to address that obligation resulted in the account being charged off. In March 2001, sole responsibility for the obligation was purportedly assigned to Applicant's ex-wife ⁽³⁰⁾ by the court. By the time of the hearing, that balance had remained unchanged as neither

Applicant nor his ex-wife had made any effort to address it.

Applicant is indebted to a national department store (identified in the SOR in subparagraph 1.g.) in the amount of approximately \$745.00, for a bad debt, not further described. He had opened the account in August 1993, and continued to routinely use it thereafter. His failure to address that obligation resulted in the account being transferred or sold. In March 2001, sole responsibility for the obligation was assigned to Applicant by the court. By the time of the hearing, that balance had purportedly been reduced, by a monthly \$50.00 allotment,⁽³¹⁾ to about \$300.00 due to his periodic payments. Although offered the opportunity to submit proof of his payments, Applicant failed to do so.

Applicant is indebted to a medical provider (identified in the SOR in subparagraph 1.h.) in the amount of approximately \$594.00, for two bills (\$357.00 and \$237.00), not further described. The services had been provided in March 1994. In March 2001, sole responsibility for the obligations was assigned to Applicant by the court. By the time of the hearing, that balance had remained unchanged as Applicant had made no effort to address it.

Applicant is indebted to an entity, not further described (identified in the SOR in subparagraph 1.i.) in the amount of approximately \$835.00, for charges, not further described. The charges had been incurred in April 1997. Applicant knows nothing about the creditor or anything about the charges.⁽³²⁾ In March 2001, sole responsibility for the obligation was purportedly assigned to Applicant by the court. By the time of the hearing, that balance had remained unchanged as Applicant had made no effort to address it.

Applicant is indebted to a local hospital (identified in the SOR in subparagraph 1.j.) in the amount of approximately \$324.00, for medical service received in April 1994. In March 2001, sole responsibility for the obligation was assigned to Applicant by the court. By the time of the hearing, that balance had remained unchanged as Applicant had made no effort to address it.

Applicant is indebted to a credit union (identified in the SOR in subparagraph 1.k.) in the amount of approximately \$103.00, for checks processed on an account with insufficient funds. The incidents arose in September 1998. In March 2001, sole responsibility for the obligation was assigned to Applicant by the court. By the time of the hearing, that balance had purportedly been paid off due to his periodic payments. Although offered the opportunity to submit proof of his payments, Applicant failed to do so.

Applicant is indebted to a truck driving school (identified in the SOR in subparagraph 1.l.) in the amount of approximately \$2,696.00, for driver training for himself. The services had been provided in May 1996. In March 2001, sole responsibility for the obligation was assigned to Applicant by the court. By the time of the hearing, that balance had remained unchanged as Applicant had made little effort to address it beyond making one telephone call.⁽³³⁾

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," ⁽³⁴⁾ 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 his ex-wife's mismanagement of the family finances, and exacerbated by his refusal to attend to their finances during the pendency of their divorce, as well as his brief periods of unemployment and underemployment, commenced in about 1994 and continued until he was divorced in March 2001. They incurred too many consumer debts and fell behind in their monthly payments. Eventually they stopped making payments altogether. As a result, various creditors either charged off their losses, transferred or sold the accounts, or referred the overdue accounts to collection.

Despite being aware of those debts, as well as there being official interest in them, in September 2000, when he was interviewed by the Defense Security Service (DSS) in connection with his application for a security clearance, he took no action to resolve them. Thereafter, despite being advised by his attorney and the court in March 2001 that the debts were his responsibility, he again took no action to resolve them. Finally, despite receiving an SOR in July 2001, by the time of the December 2001 hearing, he continued to generally ignore his creditors. It was only after the security clearance review process commenced that he was finally motivated to take *some* action with regard to three of them. And throughout the entire period, Applicant made little, if any, contributions to a savings account from which he could eventually draw funds to satisfy his creditors. 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, though relatively brief in duration and significantly aberrant in nature, falls within Financial Considerations Mitigating Condition (MC) E2.A6.1.3.3. Additionally, although he was largely unmotivated by the security clearance review process to take corrective action, and preferred to ignore his outstanding debts until long after his divorce was granted and the responsibility for those debts was assigned, at least for three outstanding debts, he purportedly did enter into repayment agreements and commence making periodic payments to reduce the outstanding balances. Nevertheless, Applicant is sending mixed signals. While he accepted a part-time position in about October 2001 supposedly to generate money to be able to pay his bills, it must be noted he also paid an attorney a retainer to file for bankruptcy, with a tentative target date of February 1, 2002. The target date was the date he anticipated being able to finally pay his attorney the final installment of the retainer. Thus, it appears he is merely making some payments while his real goal is to avoid his outstanding debt obligations by the vehicle of bankruptcy. On a sliding scale of good faith efforts, Applicant's efforts to repay the three overdue creditors would appear to fall within MC E2.A6.1.3.6. His overall refusal, however, to address the remaining eight debts over such a lengthy period, despite the appearance of motivating benchmarks, minimizes the significance of the brief evidence of positive action.

Applicant's finances are presently still not in good shape--although it is a marked improvement over their status during his lengthy period of financial mismanagement. His actions with regard to those outstanding debts, his refusal to honor those financial commitments despite voluntarily entering into them, all support the conclusion a financial problem continues to exist. Moreover, that problem is not primarily 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.a. through 1.c., 1.e., 1.f., 1.h. through 1.j., and 1.l., of the SOR are concluded against Applicant.

On the other hand, with respect to the other three delinquencies--those on which he has entered into payment arrangements and already made substantial efforts at reducing those balances, I conclude that Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the Government's case. Accordingly, allegations 1.d., 1.g., and 1.k., 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.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: For the Applicant

Subparagraph 1.l.: 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. Tr. at 17.

2. *See* Government Exhibit 2 (Statement of Subject, dated September 27, 2000), at 2.

3. Tr. at 17.

4. *See* Government Exhibit 2, *supra* note 2, at 2.

5. Tr. at 50.

6. *See* Government Exhibit 3 (Credit Report Summary), dated March 8, 1999), at 1.

7. *See* Government Exhibit 2, *supra* note 4, at 2.

8. *Ibid.*

9. Tr. at 47.

10. *See* Applicant Exhibit A (Final Order and Decree of Divorce), dated March 22, 2001.

11. *Id.*, at 3. *See also* Tr. at 39.

12. *Id.* Applicant Exhibit A, at 3.

13. *Ibid.*

14. *Id.*, at 4.

15. Tr. at 53.

16. Tr. at 59. Applicant indicated he was taking the bills one at a time.

17. Tr. at 44.

18. Tr. at 26.

19. Tr. at 45.

20. *Ibid.*

21. Tr. at 46.

22. *Ibid.*

23. Tr. at 48.

24. Tr. at 52.

25. Tr. at 49.

26. Tr. at 51.

27. Tr. at 43-44, and 52. Applicant apparently earns a rather modest salary plus commissions. *See* Applicant Exhibit B (Earnings Statements).

28. Tr. at 42-43.

29. Tr. at 60.

30. Tr. at 32.

31. Tr. at 59-60.

32. Tr. at 33.

33. Tr. at 60.

34. *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.)