

KEYWORD: Financial

DIGEST: Thirty-seven year old Applicant's history of not meeting her financial obligations, accompanied by no evidence as to possible efforts which may have been taken by Applicant to enter into payment arrangements with her creditors (other than to recently file for Chapter 7 bankruptcy); or as to any possible payments made to any of those creditors; or if she has received any counseling for her financial difficulties, raises grave questions and doubts as to her security eligibility and suitability. Clearance is denied.

CASENO: 01-01862.h1

DATE: 05/17/2002

DATE: May 17, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-01862

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Thirty-seven year old Applicant's history of not meeting her financial obligations, accompanied by no evidence as to possible efforts which may have been taken by Applicant to enter into payment arrangements with her creditors (other than to recently file for Chapter 7 bankruptcy); or as to any possible payments made to any of those creditors; or if she has received any counseling for her financial difficulties, raises grave questions and doubts as to her security eligibility and suitability. Clearance is denied.

STATEMENT OF THE CASE

On October 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, undated but submitted after receipt of the SOR on October 25, 2001, Applicant responded to the allegations set forth in the SOR, and elected to have her case decided on the written record, in lieu of a hearing. Department Counsel submitted the Government's written case on January 8, 2002. A complete copy of the file of relevant material (FORM) [\(1\)](#) was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She submitted a variety of materials, including a complete copy of the DOHA FORM on April 8, 2002. The case was assigned to, and received by, this Administrative Judge on May 3, 2002.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to financial considerations under Guideline F (subparagraphs 1.a. through 1.h.). 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 37 year old female employed by a defense contractor, and is seeking to obtain a SECRET security clearance to permit her to continue working as a truck driver - munitions carrier.

Applicant has been financially overextended since approximately February 2000, and as a consequence, since then, has demonstrated a history of not meeting her financial obligations. She attributed her predicament to a substantial cut in household income when another state garnished her husband's wages⁽²⁾ upon an Order/Notice To Withhold Income For Child Support.⁽³⁾ The Order required \$505.85 be withheld per biweekly pay period, or a total of \$1,096.00 per month. Of that amount, \$400.00 was for current child support, and \$696.00 was for past-due child support.⁽⁴⁾ In April 2000, the cost for health insurance for the child was taken from his wages, and their general insurance costs rose. As a result, they have essentially been living off her wages since that time.⁽⁵⁾

Applicant's Credit Report,⁽⁶⁾ dated August 27, 2001, indicated nine accounts as past-due, charged-off, or sent to collection. Of those, eight have been identified in the SOR, and they total approximately \$37,260.00 past-due. By her own admission, Applicant is delinquent on those eight different accounts, but indicated two of the accounts, totaling \$20,755.00, actually belonged to her husband.⁽⁷⁾

When Applicant and her husband filed their joint Voluntary Petition for Chapter 7 bankruptcy,⁽⁸⁾ they indicated their combined gross income during the two years immediately preceding the calendar year of the filing was \$32,838.92 in 2001, and \$31,960.00 in 2000.⁽⁹⁾ They also listed 27 creditors holding unsecured non-priority claims for a variety of expenditures, including a water filtration system costing \$5,900.00, and miscellaneous purchases totaling \$36,160.39.⁽¹⁰⁾ There was one unsecured priority claim and it was \$21,000.00 in past-due child support.⁽¹¹⁾ They chose to reaffirm four secured claims: first and second mortgages on their residence, a deed of trust, and a 1998 Ford Taurus.⁽¹²⁾ On April 1, 2002, their total assets were \$140,367.01, and their total liabilities were \$213,448.40.⁽¹³⁾ The status of the Petition has not been indicated, and it appears the bankruptcy process is continuing.

The record is silent as to possible efforts which may have been taken by Applicant to enter into payment arrangements

with her creditors; any possible payments made to any of those creditors; or if she has received any counseling for her financial difficulties.

Applicant has been employed as a truck driver by the same company since August 1998, and before that, in essentially the same capacity, with other employers since January 1992. ⁽¹⁴⁾ The quality of her performance has not been revealed. She was married in July 1998.

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);

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 that the issuance of the clearance is "clearly consistent with the interests of national security," [\(15\)](#) or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded that 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 that are 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, that 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 that 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 that 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 that 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 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. Some of Applicant's financial difficulties may be attributed to circumstances seemingly beyond her control, for example, when, in February 2000, the authorities finally caught up with her husband and started garnishing his wages to reduce his liability for child support arrearage totaling \$21,000.00. While that action may have been surprising when it occurred, under the circumstances of his knowing non-payment of child support, it should have been expected. The resulting loss of a significant portion of his monthly income caused them to try to live largely on her income. Whereas, in 2000, they had seemingly managed to live on a combined annual gross income of \$31,960.00, at the time of the bankruptcy filing in 2002, they were supposed to scrape by on an estimated combined annual gross salary of \$55,200.00, minus approximately \$13,152.00 for child support, and \$1,448.72 for additional health insurance for his son. In other words, by my calculations, they lost an estimated \$14,600.72 each year attributed to child support and health insurance, none of which can be attributed to financial mismanagement of Applicant.

Applicant is currently delinquent on 9 different accounts and owes substantial amounts on a number of others. However, a review of the list of creditors in the Voluntary Petition for Chapter 7 bankruptcy reveals the majority of the accounts apparently belong to Applicant's husband, rather than being hers alone or joint accounts. But, there is no documentation other than the bankruptcy filing to support that contention. In fact, pertaining only to those which are undisputedly her accounts, the record is silent as to: possible efforts which may have been taken by Applicant to enter into payment arrangements with her creditors; possible payments which may have been made to any of those creditors; or possible counseling which she may have received for her financial difficulties. The only effort seemingly made by Applicant was

to file for bankruptcy after receiving the SOR. In the absence of confirmed payment arrangements, or actual payments diminishing the 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., and DC E2.A6.1.2.3.

Applicant's contention that her financial difficulties arose from a condition which was largely beyond her control--a substantial cut in pay attributed to the garnishment of her husband's wages for child support--could be a convincing ground for possible mitigation. In this instance, however, she has, once again, failed to show how that garnishment negatively impacted her ability to remain current on her financial obligations. Absent from consideration are facts concerning her efforts, if any, to supplement her income. In the absence of such evidence, it becomes difficult to apply Financial Considerations Mitigating Condition (MC) E2.A6.1.3.3. Moreover, because of the absence of evidence showing any action by Applicant in settling these financial difficulties, it cannot be persuasively argued that she has initiated a good-faith effort to do so, thus negating the applicability of MC E2.A6.1.3.6. And finally, there is no evidence to indicate Applicant has ever received counseling for the problem or that the problem is either being resolved or is under control, thus negating the applicability of MC E2.A6.1.3.4.

As Department Counsel has pointed out, the Appeal Board has stated: [\(16\)](#)

While a discharge in bankruptcy is intended to provide a person with a fresh start financially, it does not immunize an applicant's history of financial problems from being considered for its security significance. See, e.g., DISCR Case No. 87-1800 (February 14, 1989) at p.3 n. 2 ("Although bankruptcy may be a legal and legitimate way for an applicant to handle his financial problems, the Examiner must consider the possible security implications of the history of financial debts and problems that led to the filing of bankruptcy. Furthermore, a discharge in bankruptcy does not, in itself, prove that an applicant has changed the financial habits that led to the debts discharged in bankruptcy or that his past financial difficulties are not likely to recur."). Cf. *Marshall v. District of Columbia Government*, 559 F.2d 726, 729-30 (D.C. Cir. 1977)(discharge in bankruptcy does not preclude city from considering whether past financial problems disqualify person for position as police officer).

Furthermore, while a joint Voluntary Petition for Chapter 7 bankruptcy may have been filed, the matter is by no means settled, as no discharge has yet been issued. Considering the circumstances surrounding what appears to be living beyond her means, questionable money management, and the lack of effort to resolve her financial difficulties, there is an indication the problem is not being resolved in the long term and is not under control. In the absence of evidence regarding financial counseling, it appears Applicant is still fully at risk. 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.h. of the SOR are concluded against 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.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: 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 Government submitted six items in support of its contentions.

2. *See* Response to FORM, dated April 8, 2002, at 1.

3. *See* Order/Notice To Withhold Income For Child Support, undated. The child support and arrearage was for his son born during a previous marriage in 1988.

4. *Ibid.*

5. *See* Response to FORM, *supra* note 2, at 1.

6. *See* Item 6 (Equifax Credit Report, dated August 27, 2001).

7. *See* Response to FORM, *supra* note 4, at 1. Applicant claimed the accounts set forth in subparagraphs 1.b. and 1.c. of the SOR were her husband's accounts, and since she is responsible for his debts, she admitted the allegations.

8. *See* joint Voluntary Petition, filed with the United States Bankruptcy Court, April 1, 2002.

9. *See* Statement Of Financial Affairs, *id.*

10. *See* Schedule F - Creditors Holding Unsecured Nonpriority Claims, *id.*

11. *See* Schedule E - Creditors Holding Unsecured Priority Claims, *id.*

12. *See* Schedule D - Creditors Holding Secured Claims, *id.*

13. *See* Schedule I - Current Income Of Individual Debtor(s), *id.*

14. *See* Item 4 (Security Clearance Application (SF 86), dated February 2, 1999), at 3-4.

15. *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.)

16. *See* ISCR Case No. 97-0016 (December 31, 1997), at p. 4.