

DATE: April 29, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-09847

## **DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT ROBINSON GALES**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Erin C. Hogan, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Twenty-nine year old Applicant's history of not meeting her financial obligations, accompanied by deliberate refusal to attend to them purportedly because of a dispute with her third ex-husband, and a tepid recent effort to address them after repeatedly declaring she would resolve them, only after the security clearance review process commenced, raises grave questions and doubts as to her security eligibility and suitability. Clearance is denied.

### **STATEMENT OF THE CASE**

On May 20, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated October 2, 2002, 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 October 18, 2002. A complete copy of the file of relevant material (FORM) <sup>(1)</sup> was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Any such submissions were due by January 11, 2003, <sup>(2)</sup> and she chose not to do so. The case was assigned to, and received by, this Administrative Judge on March 6, 2003.

### **FINDINGS OF FACT**

Applicant has denied all of the factual allegations pertaining to financial considerations under Guideline F

(subparagraphs 1.a. through 1.e.), as well as the one allegation pertaining to personal conduct under Guideline E (subparagraph 2.a.).

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

Applicant is a 29-year old employee of a defense contractor, and is seeking to obtain a security clearance, the level of which has not been disclosed.

Applicant has been financially overextended since the mid-1990s, and as a consequence, since then, has demonstrated a history of not meeting her financial obligations. She attributed her predicament to various causes, most notably her anger, frustration, and dissatisfaction over her third ex-husband's failure or refusal to abide by an agreement they purportedly had to assume one half of the debts previously generated.<sup>(3)</sup> She also deliberately ignored another debt because she felt the creditor had implied she was a liar.<sup>(4)</sup> And, most of the other debts became delinquent when she neglected them due to the turmoil associated with her divorces.<sup>(5)</sup>

Applicant's Report of Credit,<sup>(6)</sup> dated November 24, 1999, listed 18 accounts,<sup>(7)</sup> of which one reflected a repossession, two reflected "slow pay," and five reflected "bad debt." Of those, five have been identified in the SOR, and they total approximately \$4,328.00 past-due.

In August 1994, Applicant and her eventual third ex-husband purchased an automobile for \$16,900.00 and financed the transaction through a bank (further identified in subparagraph 1.a. of the SOR) with an installment loan requiring monthly payments of \$351.00.<sup>(8)</sup> In about August 1995, after missing one monthly payment of principal (she claimed to have paid the interest portion) Applicant initiated a voluntary surrender and repossession of the vehicle.<sup>(9)</sup> After the vehicle was sold by the creditor, there was a deficiency balance of \$3,000.00.<sup>(10)</sup>

As with the deficiency debt discussed above, Applicant contends she and her third ex-husband also had an oral agreement for this debt under which each would be responsible for one-half of the deficiency upon their divorce, but the property settlement portion of the Decree is silent as to that particular account.<sup>(11)</sup> When he failed to make any required payments, Applicant was angry and frustrated, and because she felt she would eventually also have to pay the entire amount herself, she refused to make any payments.<sup>(12)</sup> In September 2000, Applicant acknowledged she was wrong to completely ignore the debt, and vowed to satisfy the debt in full "as soon as possible."<sup>(13)</sup> With the exception of one undated letter to the creditor seeking to establish a payment plan,<sup>(14)</sup> the record is silent as to other possible efforts which may have been taken by Applicant to either actually make payments or enter into payment arrangements with the creditor.

In June 1994, Applicant opened an individual revolving charge account with a clothing store (further identified in subparagraph 1.b. of the SOR) and received items of value totaling approximately \$200.00.<sup>(15)</sup> The account eventually was "charged off" as a bad debt.<sup>(16)</sup> The property settlement portion of the Decree clearly states Applicant would be responsible for the outstanding balance with the creditor.<sup>(17)</sup> In September 2000, Applicant indicated she thought she had already paid the account off when it was closed, but vowed to satisfy the debt in full "as soon as possible."<sup>(18)</sup> With the exception of one undated letter to the creditor seeking to establish a payment plan,<sup>(19)</sup> the record is silent as to other possible efforts which may have been taken by Applicant to either actually make payments or enter into payment arrangements with the creditor.

In December 1995, Applicant opened an individual account with a telephone service (further identified in subparagraph 1.c. of the SOR) and received items or service of value totaling approximately \$486.00.<sup>(20)</sup> The account was eventually sent to collection as a bad debt, in the amount of \$351.00.<sup>(21)</sup>

Applicant contends she and her third ex-husband had an oral agreement under which each would be responsible for one-half of the debt upon their divorce, but the property settlement portion of the Decree is again silent as to that particular

account. When he failed to make any required payments, Applicant became angry and frustrated, and because she felt she would eventually have to pay the entire amount herself, she refused to make any payments.<sup>(22)</sup> In September 2000, Applicant acknowledged she was wrong to completely ignore the debt, and vowed to satisfy the debt in full "as soon as possible."<sup>(23)</sup> With the exception of one undated letter to the creditor seeking to establish a payment plan,<sup>(24)</sup> the record is silent as to other possible efforts which may have been taken by Applicant to either actually make payments or enter into payment arrangements with the creditor.

In March 1999, Applicant opened an individual account with a retail outlet (further identified in subparagraph 1.d. of the SOR) and received fuel of a value totaling approximately \$294.00.<sup>(25)</sup> Applicant contends she paid the bill with a check which, according to her, had been properly processed,<sup>(26)</sup> but which, according to the creditor, was returned for insufficient funds. The account was eventually sent to collection as a bad debt.<sup>(27)</sup> In September 2000, Applicant stated she had tried to explain the circumstances of the disputed debt but became involved in a "verbal/telephonic argument" with the creditor. When she perceived she was being called a liar, she refused to follow-up with the issue and deliberately ignored the disputed indebtedness thereafter.<sup>(28)</sup> She vowed to satisfy the debt in full if she is unable to prove that it has already been paid.<sup>(29)</sup> No such proof has been offered, and the record is silent as to possible efforts which may have been taken by Applicant to either actually make payments or enter into payment arrangements with the creditor.

In September 1994, Applicant opened an individual revolving charge account with a clothing store (further identified in subparagraph 1.e. of the SOR) and received items of value totaling approximately \$612.00.<sup>(30)</sup> The account eventually was "charged off" as a bad debt.<sup>(31)</sup> The property settlement portion of the Decree clearly states Applicant would be responsible for the outstanding balance with the creditor.<sup>(32)</sup> In September 2000, Applicant attributed the delinquency to her "divorce-related constraints," without further elaboration, and vowed to satisfy the debt in full "as soon as possible."<sup>(33)</sup> With the exception of one undated letter to the creditor seeking to establish a payment plan,<sup>(34)</sup> the record is silent as to other possible efforts which may have been taken by Applicant to either actually make payments or enter into payment arrangements with the creditor.

On June 12, 1999, Applicant completed SF 86,<sup>(35)</sup> and in response to an inquiry pertaining to possible financial delinquencies (*In the last 7 years, have you been over 180 days delinquent on any debt(s)?*), Applicant responded "no."<sup>(36)</sup> She certified her response was true, complete, and accurate. It was false. She had omitted and concealed the truth regarding a number of outstanding financial obligations which fell within that category, as described above. In fact, Applicant also lied about not having financial delinquencies currently over 90 days delinquent<sup>(37)</sup> as well as not having property repossessed in the last seven years,<sup>(38)</sup> but neither of those falsifications was alleged in the SOR. Applicant subsequently denied intending to deceive, and simply stated that she had ignored the debts so long that she continued to ignore them when completing her SF 86.<sup>(39)</sup> She eventually modified her position by denying the cited accounts were debts when she completed the SF 86.<sup>(40)</sup>

Applicant has been employed as a truck driver by the same company since May 1999, and before that, when not experiencing varying periods of unemployment, worked as a cashier for several different employers. The quality of her 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:**

(E2.A6.1.2.1.) history of not meeting financial obligations;

(E2.A6.1.2.3.) inability or unwillingness to satisfy debts;

**Conditions that could mitigate security concerns include:**

(E2.A6.1.3.3.) 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);

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

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

(E2.A5.1.2.2.) the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

**Conditions that could mitigate security concerns include:**

None apply.

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security," <sup>(41)</sup> 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.** Applicant's financial difficulties, attributed, in part, to her marital discord, were exacerbated by her deliberate refusal to attend to her finances. After she fell behind in her monthly payments, she stopped making payments altogether. As a result, various creditors either charged off their losses, transferred or sold the accounts, repossessed her motor vehicle, or referred the overdue accounts to collection. And, she issued a bad check to one creditor.

Applicant's initial motivation to ignore her debts was driven by her anger and frustration with her third ex-husband as well as her refusal to accept one creditor's explanation for failing to adjust her account following receipt of a bad check. Fiscal responsibility or moral obligation were not even remote considerations. In September 2000, upon being interviewed by an agent of the Defense Security Service (DSS), she declared her intention to resolve all her outstanding financial obligations. Yet, as of November 2001, when she responded to the DOHA-generated interrogatories, and as of October 2002, when she responded to the SOR, her inaction remained undisturbed. And, in January 2003, when afforded the opportunity to prove her debts had been resolved, she chose to pass on doing so.

Despite being aware of her debts, as well as there being official interest in them, she apparently took no action to resolve any of them until she received the DOHA-generated interrogatories, and at that point simply wrote several of those creditors. Applicant's efforts have been superficial at best, and, in reality, seem to be nothing more than promises made and broken. It was only after the security clearance review process commenced that she was finally motivated to take *some* action with regard to some of her debts. In the absence of confirmed payment arrangements, or actual payments diminishing the outstanding financial obligations, Applicant's overall conduct pertaining to her financial obligations falls within Financial Considerations Disqualifying Condition (DC) E2.A6.1.2.1. (*history of not meeting financial obligations*), and DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*).

Applicant's marital discord and divorce-some of the conditions attributed by her to be the initial causes of her financial problems-fall within Financial Considerations Mitigating Condition (MC) E2.A6.1.3.3. (*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)*). However, the significance of that MC is minimized, as to some of the debts, because those debts were directed to her responsibility in the property settlement portion of the Decree. Marital discord was not the real culprit in this instance. Applicant's anger and frustration, as well as insulted feelings, played a much larger degree of importance. Furthermore, it was her candid observation that she had simply ignored the debts.

Applicant's actions with regard to those outstanding debts, her refusal to honor those financial commitments despite voluntarily entering into them, all support the conclusion a financial problem continues to exist. Moreover, her continuing problem is not primarily the result of a condition beyond her 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 her financial considerations. Accordingly, allegations 1.a. through 1.e. of the SOR are concluded against Applicant.

**With respect to Guideline E, the Government has established its case.** Examination of Applicant's actions related to her financial delinquencies of over 180 days reveals conduct involving questionable judgment, untrustworthiness, and unreliability. There is some dispute surrounding Applicant's lack of candor for she has denied the essential elements of the allegation. But, it is inescapable that financial obligations which were considered bad debts and which were either charged off or sent to collection during the period 1994-95 would be at least 180 days delinquent as of June 1999 when she completed her SF 86.

Instead, Applicant seemingly argues that since the Report of Credit in evidence was only made in November 1999, the accounts could not be considered "debts" when she completed the SF 86. That argument lacks merit. Notwithstanding her certification, oath, and affirmation that her responses and statements were true and accurate, Applicant willfully falsified, omitted, or concealed material facts pertaining to her history of financial delinquencies of 180 days. Her lack of candor--dishonesty, falsification, omission, and deception--commenced with her false answer on the SF 86 in June 1999, and continued through her less than totally candid response during her interview with an investigator of DSS in September 2000. And, it continued in October 2002. In fact, it continues to this day because Applicant has never conceded the truth, insisting the debts were not "debts" as of the date she completed the SF 86. Applicant's questionable personal conduct in this regard clearly falls within Personal Conduct DC E2.A5.1.2.2. (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*).

Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate, meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. The nature of Applicant's actions and activities therefore pose a serious potential risk to the nation's security precautions which go to the very heart of the nation's security system.

An applicant's responsibilities associated with the granting of a security clearance are considerable in terms of protecting the national security and in maintaining appropriate personal conduct. Along with the responsibilities is accountability. In this instance, Applicant is now accountable for those past actions and activities. I believe Applicant has failed to mitigate or overcome the Government's case, for the evidence leaves me with grave questions and doubts as to Applicant's continued security eligibility and suitability. Accordingly, allegation 2.a. of the SOR is 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

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a.: 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.

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Robert Robinson Gales

## Chief Administrative Judge

1. The Government submitted eight items in support of its contentions.
2. The Memorandum of Assignment erroneously indicated the response was due on January 11, 2004, but in reality, it was due on January 11, 2003-30 days after receipt of the FORM. Also, the FORM was received on December 12, 2002.
3. *See* Item 6 (Statement, dated September 20, 2000), at 2.
4. *Id.*
5. *Id.* Applicant has been married four times and divorced three times. In this regard, *see* Item 5 (Security Clearance Application (SF 86), dated June 12, 1999), at 5.
6. *See* Item 8 (TRW-Experian Report of Credit, dated November 24, 1999).
7. One account appears five separate times, and another account appears two separate times.
8. *See* Item 6, *supra* note 3, at 1. The Report of Credit also indicates the original balance was \$413,458.00-a figure which Applicant disputes and which appears to be clearly erroneous *See also* Item 8, *supra* note 6, at 4.
9. *Id.* Item 6.
10. *Id.*
11. *See* Decree, dated September 5, 1996, at 2, attached to Item 7 (Applicant's Answer to Interrogatories, undated).
12. *See* Item 6, *supra* note 3, at 2.
13. *Id.*
14. *See* undated letter to creditor, attached to Item 4 (Response to SOR, dated October 2, 2002).
15. *See* Item 8, *supra* note 6, at 4. *See also* Item 6, *supra* note 3, at 2.
16. *Id.* Item 8.
17. *See* Decree, *supra* note 11, at 2.
18. *See* Item 6, *supra* note 3, at 2.
19. *See* undated letter to creditor, attached to Item 4 (Response to SOR, dated October 2, 2002).
20. *See* Item 8, *supra* note 6, at 4. *See also* Item 6, *supra* note 3, at 2.
21. *Id.* Item 8, at 5.
22. *See* Item 6, *supra* note 3, at 2.
23. *Id.*
24. *See* undated letter to creditor, attached to Item 4 (Response to SOR, dated October 2, 2002).
25. *See* Item 8, *supra* note 6, at 6. *See also* Item 6, *supra* note 3, at 2.
26. *Id.* Item 6.

27. *Id.* Item 8.

28. *See* Item 6, *supra* note 3, at 2.

29. *Id.*

30. *See* Item 8, *supra* note 6, at 6-7. *See also* Item 6, *supra* note 3, at 2.

31. *Id.* Item 8.

32. *See* Decree, *supra* note 11, at 2.

33. *See* Item 6, *supra* note 3, at 2.

34. *See* undated letter to creditor, attached to Item 4 (Response to SOR, dated October 2, 2002).

35. *See* Item 5, *supra* note 5.

36. *Id.*, at 10 (Question 38).

37. Question 39 (*Are you currently over 90 days delinquent on any debt(s)?*).

38. Question 35 (*In the last 7 years, have you had any property repossessed for any reason?*).

39. *See* Item 6, *supra* note 3, at 3.

40. *See* Item 4 (Response to SOR, dated October 2, 2002), at 1-2.

41. *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.)