

DATE: March 31, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-25853

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Forty-five year old Applicant with a lengthy history of ignoring his financial obligations, and a tepid recent effort to address some of those obligations only after the security clearance review process commenced, raises grave questions and doubts as to his security eligibility and suitability. Clearance is denied.

STATEMENT OF THE CASE

On October 21, 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 January 7, 2003, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was initially assigned to Administrative Judge Matthew E. Malone on February 13, 2003, but due to caseload considerations, was reassigned to, and received by, this Administrative Judge on February 21, 2003. A notice of hearing was issued on February 21, 2003, and the hearing was held before me on March 11, 2003. During the course of the hearing, six government exhibits, and seven Applicant exhibits, and the testimony of one Applicant witness (the Applicant), were received. The transcript (Tr.) was received on March 18, 2003.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to financial matters under Guideline F (subparagraphs 1.a.(1) through 1.a.(7)., and 1.b.). 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 45-year old employee of a defense contractor, and is seeking to obtain a security clearance. He presently holds an interim security clearance.

Applicant has seemingly been financially overextended since about 1996. He had obtained several student loans from the U.S. Department of Education, initially totaling approximately \$9,500.00, while attending a computer electronics school in 1995-96,⁽¹⁾ but when he commenced receiving correspondence related to repayment of the loans during 1996-97, he ignored those notices because he was "not in a position to repay it at the time."⁽²⁾ As a result, each of the past due loans went into default and was placed for collection. Eventually, a garnishment action was commenced. Applicant subsequently agreed to have \$50.00 per month garnished from his wages.⁽³⁾

The process continued undisturbed until about December 1998, when, without informing the creditor, Applicant left his position with his employer and took a job elsewhere. The garnishment ceased at that point and no further effort was made by Applicant to either inform the creditor of his new status or make payments directly. Finally, intending to purchase a new residence sometime in the future, in June 2001, Applicant decided it was time to repair his credit standing and approached the creditor to do so.⁽⁴⁾ In July 2001, the loans were consolidated and an extended repayment plan was set up with the creditor. The plan called for monthly payments of approximately \$97.00 commencing in August 2001.⁽⁵⁾ The total principal balance outstanding was \$9,488.42,⁽⁶⁾ and when the final expected payment was to be made in July 2013, the total payments would be approximately \$14,000.00.⁽⁷⁾ In October 2001, Applicant indicated an intent to remain current and satisfy the obligation in its entirety.

The repayment plan requiring monthly payments of approximately \$97.00 remained in place until about December 2001, when a Reduced Payment Forbearance lowering the monthly payment to \$65.00 was activated.⁽⁸⁾

In May 1997, Applicant purchased a 1994 pre-owned motor vehicle for over \$26,000.00 and financed the transaction with a loan requiring monthly payments of \$444.00.⁽⁹⁾ Following a haphazard payment history, and with the account becoming increasingly delinquent, in about August 2001, the vehicle was involuntarily repossessed.⁽¹⁰⁾ At the time the vehicle was repossessed, but before it was auctioned, Applicant anticipated owing an unpaid balance of approximately \$5,500.00, which he declared he intended to satisfy.⁽¹¹⁾ Despite his best intentions, Applicant ignored the notices from the creditor,⁽¹²⁾ and, until August 2002, when prompted by interrogatories from DOHA, made no effort to enter into a payment plan.⁽¹³⁾ That superficial effort was followed by Applicant's continued inaction, inaction which continues until the closing of the record,⁽¹⁴⁾ despite entreaties from the creditor to respond to an offer to make suitable payment arrangements.⁽¹⁵⁾ The outstanding balance as of November 6, 2002 was \$9,574.35.⁽¹⁶⁾ That amount has now increased to approximately \$9,800.00.⁽¹⁷⁾

In February 2001, a nationwide telecommunications company referred Applicant's past-due unpaid account, in the amount of \$146.00, for long distance service, to a collection agency.⁽¹⁸⁾ Applicant admits the debt,⁽¹⁹⁾ but disputes the basis for it by contending he never had long distance service furnished by the creditor.⁽²⁰⁾ As he did with the auto loan, Applicant made no effort to resolve or even openly dispute the obligation until prompted to do so in August 2002 when he received interrogatories from DOHA. He sent one letter to the creditor at that time and, without identifying any account number, asked the creditor to search its records for any outstanding account that Applicant might owe the creditor and establish a repayment schedule.⁽²¹⁾ To this day, the *status quo* remains unchanged.

In February 1999, an emergency care provider referred Applicant's past-due unpaid account, in the amount of \$134.00, for professional services previously rendered, to a collection agency.⁽²²⁾ Applicant admitted this was one of the debts he had "ignored over the years."⁽²³⁾ Finally, in August 2002, upon receipt of the DOHA interrogatories, Applicant wrote the creditor and indicated a desire to establish a repayment schedule.⁽²⁴⁾ Such a schedule was eventually agreed upon and, according to Applicant, he has been making monthly payments of \$25.00 since October 2002.⁽²⁵⁾ With an

acknowledged balance of \$84.00 as of December 16, 2002, (26) Applicant now claims he is "current." (27) He has no documentation to support his contention that his monthly payments have been made on schedule.

In December 1997, a hospital referred Applicant's past-due unpaid account, in the amount of \$111.00, for professional services previously rendered, to a collection agency. (28) Applicant included this debt with those other obligations which he said he had "ignored over the years." (29) In August 2002, upon receipt of the DOHA interrogatories, Applicant wrote the creditor and indicated a desire to establish a repayment schedule. (30) No such agreement took place until five months later when Applicant agreed to make his initial installment payment of \$27.82 on January 16, 2003. (31) Applicant acknowledged he did not make his first installment payment as he had hoped, (32) and offered no explanation for his failure to follow through with his promise.

In May 2000, Applicant opened a credit card account with a bank and the balance owed on the account rapidly climbed. His payments were chronically late, and he was 90 or more days past due on four occasions before the account was eventually charged off as a bad debt and referred to collection. (33) Applicant made no effort to resolve this indebtedness until prompted to do so in August 2002 when he received the interrogatories from DOHA. He sent a letter to the creditor and indicated a desire to establish a repayment schedule. (34) Such a schedule was eventually agreed upon and, according to Applicant, he has been making monthly payments of \$25.00 since October 2002. (35) The past due balance, as of December 12, 2002, was \$575.00, (36) and as of December 16, 2002, was \$559.49. (37)

In June 1999, a national retailer referred Applicant's past-due unpaid account, in the amount of \$213.00, for unspecified materials previously received, to a collection agency. (38) Applicant included this debt with those other obligations which he said he had "ignored over the years." (39) In August 2002, upon receipt of the DOHA interrogatories, Applicant wrote the creditor and indicated a desire to establish a repayment schedule. (40) No such agreement took place and to this day, Applicant took no further actions to resolve the debt and the *status quo* remains unchanged. (41)

On August 31, 1998, Applicant issued a check to a county government, in the amount of \$75.00, presumably for parking. (42) The check was returned unpaid with the notation the payment was refused because of insufficient funds. (43) The creditor informed Applicant he had 30 days from the mailing of the notice to pay the County Attorney's Office sufficient money to pay such check in full and a collection fee of \$25.00 for a total amount of \$100.00. (44) He failed to comply with the notice, and was subsequently informed the new liability was recalculated to \$250.00. (45) On June 7, 2002, a Writ of Summons was filed in court establishing a court date of August 28, 2002. (46) On that date, Applicant failed to appear, but instead sent a letter to the County Attorney acknowledging the debt and seeking a repayment plan. As a good faith gesture, he enclosed a check for \$25.00. (47) An "Affidavit Judgment" was subsequently entered in favor of the county. (48) He has since made payment arrangements to resolve the matter. (49)

Aside from the debts appearing in the SOR, Applicant's current finances are in disarray and he still has a number of unpaid financial obligations. He is behind in his federal income tax payments for the years 1997-2001, and owes the Internal Revenue Service (IRS) approximately \$10,000.00 due to insufficient withholding caused by his claiming too many dependents. (50) While he claims to have approached the IRS to establish a payment plan, no arrangements have yet been discussed. (51) Likewise, Applicant owes state income taxes for an unspecified period, but he has made no effort to contact the state authorities. (52)

In addition, Applicant's one remaining bank credit card, although previously past due, is once again current, but admittedly near its maximum limit. (53) His gasoline credit card was also past due, but is now merely "maxed out," and he is making minimum monthly payments. (54)

Applicant has acknowledged searching for consumer counseling services, and has conceded being told to bring in his bills for assistance in consolidating them. (55) He has not yet done so. (56) Instead, he is waiting until April 2003 to enroll (57)

in a five-week general counseling course, and has not requested direct consumer counseling. Also, he has requested this security clearance review process be delayed for six months to enable him to clean up his outstanding debts. (58)

Applicant married and divorced the same woman on two different occasions, and he currently has a 14-year old son residing with him.

A network tech analyst with his company since October 1999, Applicant's 2002 technical annual performance review rated him as "outstanding" - the highest level of five different categories, and he has been characterized as a "lynch-pin" of his company's performance in a particular area.

Applicant served on active duty with the United States Marine Corps from February 1975 until September 1979, and received an honorable discharge.

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 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,"⁽⁵⁹⁾ 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 marital discord and responsibilities as a single parent, were exacerbated by his lengthy periods of ignoring correspondence from creditors and a refusal to attend to his finances. As a result, he incurred too many consumer debts and fell behind in his monthly payments. Eventually he stopped making payments altogether. As a result, various creditors either charged off their losses, transferred or sold the accounts, repossessed a motor vehicle, or referred the overdue accounts to collection. And, he issued a bad check to a county government.

It is significant that Applicant's motivation to periodically address his debts was rather parochial. When, in July 2001, he decided to clean up his defaulted education loans, it was because he felt he needed a scrubbed credit record to purchase a new residence. Fiscal responsibility or moral obligation were not even remote considerations. In October 2001, he declared his intention to resolve all his outstanding financial obligations, yet as of July 2002, his inaction remained undisturbed.

Despite being aware of his debts, as well as there being official interest in them, he took no action to resolve any of them until he received the DOHA interrogatories. Applicant's efforts have been superficial at best, and, in reality, seem to be nothing more than promises made and broken, accompanied by requests for more time. It was only after the security clearance review process commenced that he was finally motivated to take *some* action with regard to some of his debts. Thus, his conduct pertaining to his financial obligations falls within Financial Considerations Disqualifying Condition (DC) E2.A6.1.2.1., and DC E2.A6.1.2.3.

Applicant's marital discord and divorce - some of the conditions attributed by him to be the causes of his financial problems - fall 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 meaningful corrective action, and preferred to ignore his outstanding debts as long as he could, 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. 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 failure, however, to address the remaining outstanding 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, his continuing problem is not primarily the result of

a condition beyond his control. And, it does not appear he is able to keep his head above water with his new debts. 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.(2), 1.a.(3), 1.a.(5), 1.a.(7), and 1.b., 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.a.(1), 1.a.(4), and 1.a.(6), 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.(1): For the Applicant

Subparagraph 1.a.(2): Against the Applicant

Subparagraph 1.a.(3): Against the Applicant

Subparagraph 1.a.(4): For the Applicant

Subparagraph 1.a.(5): Against the Applicant

Subparagraph 1.a.(6): For the Applicant

Subparagraph 1.a.(7): Against the Applicant

Subparagraph 1.b.: 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. *See* Government Exhibit 5 (Statement of Subject, dated October 23, 2001), at 1.

2. *Id.*, at 2.

3. *Ibid.*

4. *Ibid.*

5. *See* Government Exhibit 6 (Applicant's Response to Interrogatories, dated August 28, 2001), at 7 (U.S. Department of Education Student Financial Assistance letter, dated August 8, 2001).

6. *Id.*, at 8 (Direct Loan Verification, dated August 2, 2001).

7. *Id.*, at 9 (Disclosure of Payment Amount, dated July 31, 2001), at 1.

8. *See Applicant Exhibit C (Direct Loans Reduced Payment Forbearance Payment Plan Billing Statement, undated). The Reduced Payment Forbearance was to be in effect until December 28, 2002, after which the original conditions were to apply. See also, Response to SOR, dated January 7, 2003, at 1.*

9. *See Government Exhibit 3 (Report of Credit, dated February 19, 2001), at 5.*

10. *See Government Exhibit 5 supra note 1, at 2.*

11. *Ibid.*

12. *See Applicant Exhibit A (Letter from creditor, dated November 6, 2002).*

13. *See Government Exhibit 6, supra note 5, at 12 (Letter to creditor, dated August 28, 2002).*

14. Tr., at 41. Applicant stated he had been in contact with the creditor but was unable to agree to pay \$5,500.00 to avert a law suit. In this regard, *see Response to SOR, supra note 8, at 1-2.*

15. *See Applicant Exhibit A, supra note 12.*

16. *Ibid.*

17. Tr., at 41.

18. *See Government Exhibit 4 (Report of Credit, dated September 27, 2001), at 6.*

19. *See Response to SOR, supra note 8, at 2.*

20. *Ibid.*

21. *See Government Exhibit 6, supra note 5, at 13 (Applicant's letter to creditor, dated August 28, 2002).*

22. *See Government Exhibit 4, supra note 18, at 6.*

23. *See Government Exhibit 5, supra note 1, at 2.*

24. *See Government Exhibit 6, supra note 5, at 14 (Applicant's letter to creditor, dated August 28, 2002).*

25. *See Response to SOR, supra note 8, at 2.*

26. *See Applicant Exhibit E (Collection Agency Statement of Account, dated December 7, 2002).*

27. Tr., at 44-45.

28. *See Government Exhibit 4, supra note 18, at 6.*

29. *See Government Exhibit 5, supra note 1, at 2.*

30. *See Government Exhibit 6, supra note 5, at 15 (Applicant's letter to creditor, dated August 15, 2002).*

31. *See Response to SOR, supra note 8, at 2.*

32. Tr., at 46.

33. *See Applicant Exhibit D (Report of Credit, dated December 12, 2002), at 1.*

34. See Government Exhibit 6, *supra* note 5, at 16 (Applicant's letter to creditor, dated August 28, 2002).

35. See Response to SOR, *supra* note 8, at 2.

36. See Applicant Exhibit D, *supra* note 33, at 1.

37. See Applicant Exhibit F (Collection Agency Statement of Account, dated December 7, 2002).

38. See Government Exhibit 3 (Report of Credit, dated February 19, 2001), at 6.

39. See Government Exhibit 5, *supra* note 1, at 2.

40. See Government Exhibit 6, *supra* note 5, at 16 (Applicant's letter to creditor, dated August 28, 2002).

41. Tr., at 47.

42. See Government Exhibit 6, *supra* note 5, at 21 (Applicant's check, number 0156, dated August 31, 1998).

43. *Id.*, at 20 (Notice of Dishonored Check, dated November 23, 1999).

44. *Ibid.*

45. *Id.*, at 19 (Complaint, illegibly dated).

46. *Id.*, at 18 (Writ of Summons, filed June 7, 2002).

47. *Id.*, at 17 (Letter to County Attorney, dated August 28, 2002)

48. See Response to SOR, *supra* note 8, at 3.

49. *Ibid.*

50. Tr., at 48.

51. *Ibid.*

52. Tr., at 49.

53. Tr., at 50.

54. Tr., at 51.

55. Tr., at 59.

56. *Ibid.*

57. Tr., at 47.

58. See Response to SOR, *supra* note 8, at 2. It should be noted, in October 2001, Applicant contended he was, at that time, financially solvent - a contention which has proven to be more hope than fact. See Government Exhibit 5, *supra* note 1, at 2.

59. 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.)