

DATE: January 12, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-06636

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT ROBINSON GALES**

**APPEARANCES**

**FOR GOVERNMENT**

Erin C. Hogan, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Thirty-year old Applicant's history of not meeting his court-mandated financial obligations, totaling about \$8,498.00, accompanied by his declaration that he had no intention to pay off those debts because he believed he was stuck with them by the court as a result of his divorce in March 1999, raises grave questions and doubts as to his security eligibility and suitability. Clearance is denied.

**STATEMENT OF THE CASE**

On July 28, 2003, 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. The SOR 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 26, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record, in lieu of a hearing. Department Counsel submitted the Government's written case on October 2, 2003. A complete copy of the file of relevant material (FORM) [\(1\)](#) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Any such submissions were due by November 12, 2003. He apparently chose not to do so. The case was assigned to me on January 8, 2004.

**FINDINGS OF FACT**

Applicant has admitted both of the factual allegations pertaining to financial considerations under Guideline F

(subparagraphs 1.a. 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 30-year-old employee of a defense contractor seeking to obtain a security clearance to permit him to continue working as a tool builder.

Applicant has been financially overextended since approximately early 1999, and as a consequence, since then, has demonstrated a history of not meeting his financial obligations. He attributed his predicament to a divorce in March 1999, an increasing balance due to the continuing accrual of interest charges, an inability to be able to afford to pay off certain debts, and his prioritization of debts. <sup>(2)</sup>

Applicant's Report of Credit, <sup>(3)</sup> dated October 17, 2001, indicated three accounts as past-due, charged-off, or sent to collection. Of those, two have been identified in the SOR, and they total approximately \$8,498.00 past-due. By his own admission, Applicant is delinquent on those accounts.

The first account, with a bank credit card (more fully identified in subparagraph 1.a. of the SOR), was opened by Applicant in October 1994 as an individual revolving account. <sup>(4)</sup> The account balance eventually reached \$3,727.00, and that balance was charged off as a bad debt. <sup>(5)</sup> The second account, also with a bank credit card (more fully identified in subparagraph 1.b. of the SOR), was opened by Applicant in March 1994 as an individual revolving account. <sup>(6)</sup> The account balance eventually reached \$4,771.00, and that balance too was charged off as a bad debt. <sup>(7)</sup> Applicant stopped making any payments towards either account in March 1999 because he could not afford to pay them. <sup>(8)</sup>

In December 2001, Applicant contended the accounts were joint accounts in the names of his wife and himself, <sup>(9)</sup> but the information appearing in the Report of Credit is contrary to Applicant's assertions. Nevertheless, as part of his March 1999 divorce decree, Applicant was ordered by the court to assume the debts from his wife and pay them off. <sup>(10)</sup> Although he had not yet made any payments, in December 2001, Applicant indicated his intentions to do so. <sup>(11)</sup> His attitude and intentions changed dramatically, and just two months later, in February 2002, Applicant reversed himself and declared he "was stuck with bills in divorce [and] have no intentions of paying." <sup>(12)</sup> He repeated his position in August 2003: "I was stuck with debt in divorce and have no intentions of paying it back." <sup>(13)</sup>

Applicant has been employed as a tool builder by the same company since July 1991. <sup>(14)</sup> The quality of his 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, as well as those which could mitigate security concerns, pertaining to this adjudicative guideline are set forth and discussed in the Conclusions section below.

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>(15)</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 drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided 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. At some point, since approximately early 1999, some of Applicant's accounts slipped into a slow-pay or bad debt category. As noted above, Applicant initially attributed his financial difficulties to a combination of events including his divorce in arch 1999, the increasing balances due to the continuing accrual of interest charges, his inability to be able to afford to pay off certain debts, and his prioritization of debts. Applicant was ordered by the court to assume responsibility for the debts from his wife and pay them off. He initially stated an intention to do so, and promised to enter into arrangements with the creditors. Yet, despite his December 2001 promise to pay off these debts, to date, he has not taken any efforts to do so. Furthermore, since February 2002, and repeated in August 2003, Applicant declared he no longer had any intention to comply with the court order to pay off the two overdue accounts. He contends he is current in all his other accounts. In the absence of confirmed payment arrangements, or actual payments diminishing the outstanding financial obligations, Applicant's overall

conduct pertaining to his financial obligations clearly falls within Financial Considerations Disqualifying Condition (DC) E2.A6.1.2.1. (*a history of not meeting financial obligations*), and DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*). In this instance, it is unclear if Applicant originally had the ability to pay off the debts or if his nonpayment was pretext for an unwillingness.

Applicant's contention that his financial difficulties arose from a condition which was largely beyond his control--a divorce--could be a convincing ground for possible mitigation. In this instance, however, he has failed to show how that divorce negatively impacted his ability to remain current on his court-ordered financial obligations. Also absent from consideration are facts concerning his efforts, if any, to supplement his income or otherwise convince the court why the debts should not have been awarded to him. In the absence of such evidence, and especially in light of his repeated and continuing refusal to comply with the court mandate, it becomes difficult to apply 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, because of the absence of evidence showing any action by Applicant in settling these financial difficulties, it cannot be persuasively argued that he has initiated a good-faith effort to do so, thus negating the applicability of MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Furthermore, Applicant's attitude in ignoring the court-mandate is troubling because he places himself above the law and believes it is acceptable for him to decide what legal mandates he wishes to comply with. Considering the circumstances surrounding what appears to be a lack of effort to resolve his financial difficulties, there is an indication the problem is not being resolved in the long term and is not under control. Thus, 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. and 1.b. 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

### **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. Item 6 (Statement, dated December 20, 2001), at 2-3.
  3. Item 8 (TRW-Experian Report of Credit, dated October 17, 2001).
    4. *Id.*, at 3.
    5. *Id.*
    6. *Id.*, at 3-4.
    7. *Id.*, at 4.

8. Item 6, *supra* note 2, at 1-3.

9. *Id.*, at 2.

10. *Id.*

11. *Id.*, at 2-3.

12. Item 7 (Financial Interrogatory, dated February 13, 2002), at 2.

13. Item 4 (Response to SOR, dated August 26, 2003), at 2.

14. Item 5 (Security Clearance Application (SF 86), dated September 5, 2000), at 8.

15. Exec. Or. 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" (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" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2.)