

DATE: September 13, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-28997

## **DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT ROBINSON GALES**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Juan J. Rivera, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Sixty-one year-old Applicant has a history of financial delinquencies. His dischargeable delinquent accounts were discharged by Chapter 7 bankruptcy in 1997, but his inability to take control of his finances, exacerbated by periodic periods of unemployment, resulted in a Chapter 13 bankruptcy filing in 2001. That filing was dismissed because of his failure to comply with the provisions of his payment plan. While he purportedly made some superficial attempts to address some accounts, the evidence supports the conclusion that he paid little, if any, attention to his debts, and merely ignored them over an extended period. His lengthy period of inaction raises grave questions and doubts about his security eligibility and suitability. Clearance is denied.

### **STATEMENT OF THE CASE**

On June 2, 2004, 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 undated statement, received by DOHA on June 28, 2004, Applicant responded to the allegations in the SOR and requested a hearing. Department Counsel indicated the government was ready to proceed on February 14, 2005, and the case was assigned to me on March 10, 2005. A notice of hearing was issued that same day, and I convened the hearing, as scheduled, on March 31, 2005. During the hearing, nine government exhibits, four Applicant exhibits, and Applicant's testimony, were received. Applicant was afforded additional time after the hearing to submit other exhibits and he did so within the allotted period. Department Counsel did not object to the two additional exhibits. The transcript (Tr.) was received on April 11, 2005.

## FINDINGS OF FACT

Applicant admitted nearly all of the factual allegations pertaining to financial matters under Guideline F (subparagraphs 1.a. through 1.c., 1.e., and 1.g. through 1.i.). Those admissions are incorporated herein as findings of fact. He denied the remaining allegations (subparagraphs 1.d. and 1.f.), claiming they referred to the same satisfied debt.

After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is a 61-year-old employee of a defense contractor. He seeks a security clearance, the level of which has not been divulged. He was previously granted SECRET clearances as far back as November 1964. [\(1\)](#)

Applicant has a lengthy history of financial difficulties involving a variety of delinquent accounts which have been placed for collection, charged off, resulted in repossession or foreclosure, or resolved through bankruptcy. A portion of those financial delinquencies can be attributed to periodic periods of unemployment: one week in October 1996, [\(2\)](#) seven weeks during May-July 1998, [\(3\)](#) five weeks during December 1998-January 1999, [\(4\)](#) five weeks during March-April 1999, [\(5\)](#) two and ½ weeks during May-June 1999, [\(6\)](#) nearly nine weeks during May-July 2000, [\(7\)](#) seven weeks during January-March 2001, [\(8\)](#) ten weeks during May-July 2001, [\(9\)](#) and nineteen weeks during September 2001-February 2002. [\(10\)](#) During the other periods, Applicant has been employed either in temporary or permanent positions.

It is difficult to pinpoint when Applicant's financial condition first became a problem, but it appears it was as early as 1989. Because of a \$5,506.22 deficiency in his income tax payment for the tax period ending December 1989, a tax lien was filed in December 1992. [\(11\)](#) It was subsequently released in April 1997. [\(12\)](#) At one point in August 1996, Applicant's financial situation was so unsound that he and his wife filed a Joint Voluntary Petition for bankruptcy under Chapter 7 of the Bankruptcy Code. [\(13\)](#) At that time, they had assets totaling \$40,178.00 (\$38,820.00 of the total was real property) and liabilities totaling \$26,375.98. [\(14\)](#) Those liabilities included credit cards, medical bills, back taxes, and a repossession deficiency. [\(15\)](#) Applicant and his wife were released from all dischargeable debts on arch 18, 1997. [\(16\)](#)

Despite being unburdened by his previous unmanageable delinquent debt, Applicant again started experiencing financial difficulties which he attributed, in large measure, to the slowing economy and lack of work caused by the terrorist attacks of September 11, 2001. [\(17\)](#) Contrary to his contention, however, Applicant's financial condition had deteriorated dramatically over a year before those terrorist attacks to such a degree that in March 2001-six months before those attacks, and nearly five years after his earlier Chapter 7 discharge-Applicant and his wife filed a Joint Voluntary Petition for bankruptcy under Chapter 13 of the Bankruptcy Code. [\(18\)](#) At the time of this filing, they had assets totaling \$53,595.00 (\$50,000.00 of the total was real property), and liabilities totaling \$97,345.55. [\(19\)](#)

Applicant's payment plan called for him to make monthly payments of \$920.00 for a period of 60 months, to commence in May 2001. [\(20\)](#) Only one such payment was ever made under the plan. [\(21\)](#) In an effort to resuscitate the plan, in August 2001, an order was issued based on a joint stipulation under which Applicant agreed to make increased payments of \$1,380.00 per month for six months, to commence in September 2001. [\(22\)](#) No such payments were made, and, on October 12, 2001, the case was dismissed. [\(23\)](#)

The SOR identifies seven delinquent accounts totaling approximately \$60,837.24. Those accounts, and their current status, are described below:

| SOR # | TYPE DEBT   | AMOUNT  | CURRENT STATUS   |
|-------|---|---|--|
| 1.c.  | automobile repossession deficiency <a href="#">(24)</a> | \$748.73 according to creditor; <a href="#">(25)</a> but \$618.00 according to credit report <a href="#">(26)</a> | Unpaid since 1999. <a href="#">(27)</a> Creditor added cost of repossessing, holding, and preparing vehicle for sale (\$550.00). <a href="#">(28)</a> Applicant purportedly called creditor in 2002 to settle account without paying costs but no agreement made. <a href="#">(29)</a> |

|               |                                   |                               |  |
|---------------|-----------------------------------|-------------------------------|--|
| 1.d./<br>1.f. | individual<br>credit card<br>(30) | now zero (31)                 | Paid in full January 31, 2004. (32)  |
| 1.e./<br>1.g. | disposal<br>service (33)          | \$185.00 and<br>\$113.00 (34) | In June 2002, Applicant agreed to pay \$50.00 per month, (35) but no payments have yet been made. (36)   |
| 1.h.          | student<br>loans (37)             | \$54,727.51 (38)              | Because of Applicant's failure to meet terms of Promissory Note, make any payments, or respond to notices, a final demand was made on September 21, 2003 for the entire balance. (39) He commenced making monthly payments in October 2004, (40) after receiving the SOR. He now pays \$480.00 per month. (41) |
| 1.i.          | automobile<br>dealer (42)         | \$2,150.00 (43)               | Unpaid. (44) Applicant promised to set up payment schedule in October 2003, (45) but purportedly was unable to locate creditor. (46)   |

In June 2002, during an interview with a special agent of the Defense Security Service (DSS), Applicant acknowledged having six debts, (47) including five subsequently listed in his SOR. He referred to scheduled monthly payments as well as actual monthly payments, but in large measure, those payments listed as "actual," were, contrary to his assertion, not being made. In fact, with one exception, Applicant remained unmotivated to make payments to any of the creditors holding Applicant's delinquent accounts until he received the SOR in June 2004. In addition, upon receiving interrogatories from DOHA, Applicant contends he was delayed in addressing his delinquent accounts because of "medical concerns." (48) He purportedly "had a heart attack," (49) which turned out to be a rapid heart beat, (50) and was advised he was diabetic. (51) He was not hospitalized for his conditions. (52) With minor exceptions, Applicant has no documents or receipts reflecting payment arrangements or continuing payments toward his various delinquent debts.

In June 2002, Applicant's monthly gross salary was about \$3,570.00. (53) As of the date of the hearing, nearly one year later, that figure had risen to about \$5,880.00, (54) leaving a substantial amount of discretionary income available to pay off delinquent debts. While he has no additional delinquent, or even current, debts other than the ones listed in the SOR, Applicant did purchase a new 2005 automobile in late 2004. (55)

Applicant and his wife have been married since 1966, and they have four children (born in 1967, 1968, 1970, and 1973). (56) Two of his children, as well as two granddaughters, currently reside with them on a temporary basis, in part because of a hurricane, and they generally share grocery expenses.

Applicant has been employed as a Designer with the same defense contractor since March 2002, (57) where he also serves as union steward. He is viewed as a valued employee. (58)

## 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 guideline 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, 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," [\(59\)](#) 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 draw only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I 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:

The government has established its case under Guideline F. Commencing as early as the tax period ending December 1989, and continuing at least until the date of the hearing, Applicant has had a lengthy history of financial difficulties and delinquencies. He had a tax lien, accounts placed for collection or charged off, as well as a repossession and a foreclosure. Unable to handle his numerous delinquent accounts, he filed for bankruptcy under Chapter 7 in 1996, and had his dischargeable liabilities discharged in 1997. In March 2001, nearly five years after that Chapter 7 discharge, and despite being relieved of his previous unmanageable delinquent debt, Applicant was experiencing such financial difficulties that he and his wife again filed for bankruptcy, this time under Chapter 13. This bankruptcy petition was subsequently dismissed due to Applicant's failure to abide by the terms of the payment plan or its modification.

Although Applicant contended that he tried to maintain his accounts in a current status, or to start resolving delinquent accounts, there is little

evidence to support those contentions. To the contrary, while he made some superficial attempts to address some accounts, the evidence supports the conclusion that he paid little, if any, attention to his debts and merely ignored them over an extended period. Being interviewed by DSS in 2002 or answering interrogatories in 2003 generated promises to resolve delinquencies, as well as indications that some accounts were being paid, but in large measure, there was still inaction regarding actual debt resolution. The issuance of the SOR in June 2004 failed to motivate meaningful efforts until October 2004. Applicant's failure to take reasonable precautions to avoid overextending his financial condition after his Chapter 7 discharge in 1997, and for allowing himself to financially plummet again, give rise to Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. (*history of not meeting financial obligations*); and FC DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*).

Applicant has argued the applicability of certain Financial Considerations Mitigating Conditions (FC MC) which, in my estimation, do not apply to the evidence developed herein. FC MC E2.A6.1.3.1. (*the behavior was not recent*) does not apply because, while the basic debts may have been generated during the 1990s and thereafter, the behavior in not attempting to satisfy them generally continued until October 2004. Because of the absence of timely meaningful efforts by Applicant to resolve his outstanding financial obligations, this matter does not come within FC MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). His vacillation over a substantial period of time, even after resolving his earlier debts by Chapter 7 bankruptcy discharge, with no substantial positive action being taken, simply indicates promises made but not kept. To his credit, it appears that Applicant may have finally come to terms with some of his delinquent debts, but in this instance, after so many years of inaction, his sporadic efforts commencing in October 2004 are too new and untested.

Applicant has also argued his financial difficulties were largely the result of periodic periods of unemployment, lack of employment, and insufficient salary. While he did, in fact, experience some unemployment-between one week and 19 weeks at a time-for the most part, he was gainfully employed. While an individual may incur financial obligations for a variety of reasons, the failure to make any timely efforts to resolve those obligations, even in difficult times, is not acceptable. The evidence does, however, support the limited application of FC 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)*). While the existence of such circumstances may explain difficulties in resolving delinquent financial obligations in the short term, it does not justify long term inaction on Applicant's part to set up a payment plan with his creditors until after he received his SOR. No other FC MC applies under these circumstances.

It appears that Applicant may finally be on his way towards resolving his financial problems, although they are far from being under control. Nevertheless, under these circumstances, 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.c., 1.e., and 1.g. through 1.i., of the SOR are concluded against Applicant. Since he has resolved the indebtedness set forth in 1.d. of the SOR, which is the same indebtedness as that referred to in 1.f. of the SOR, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the government's case with respect to those allegations. Accordingly, allegations 1.d. and 1.f. of the SOR are concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is not eligible for access to classified information.

### **FORMAL FINDINGS**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1., Guideline F: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: 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. Clearance is denied.

Robert Robinson Gales

Chief Administrative Judge

1. Government Exhibit 1 (Security Clearance Application (SF 86), dated March 19, 2002), at 14.
2. *Id.*, at 7.
3. *Id.*
4. *Id.*, at 6.
5. *Id.*, at 5.
6. *Id.*
7. *Id.*, at 4.
8. *Id.*
9. *Id.*, at 3.
10. *Id.*
11. Government Exhibit 7 (Certificate of Federal Tax Lien, dated April 21, 1997).
12. *Id.*
13. Government Exhibit 9 (Voluntary Petition, dated August 19, 1996-Bankruptcy case file), at 1-2. Applicant, his wife, and their attorney signed the Voluntary Petition on August 19, 1996, but appears it was not actually filed until November 25, 1996.
14. Government Exhibit 9 (Summary of Schedules-Bankruptcy case file).
15. Government Exhibit 9 (Schedule F - Creditors Holding Unsecured Nonpriority Claims-Bankruptcy case file), at 1-3.
16. Government Exhibit 9 (Discharge of Joint Debtors, dated March 18, 1997-Bankruptcy case file).
17. Government Exhibit 2 (Statement, dated June 21, 2002), at 2.
18. Government Exhibit 8 (Voluntary Petition, dated March 23, 2001-Bankruptcy case file), at 1-2.
19. Government Exhibit 8 (Summary of Schedules-Bankruptcy case file).
20. Government Exhibit 8 (Chapter 13 Plan, dated April 10, 2001-Bankruptcy case file), at 1.
21. Government Exhibit 8 (Trustee's Final Report, dated December 7, 2001-Bankruptcy case file).
22. Government Exhibit 8 (Order Approving Joint Stipulation Between Debtor and Chapter 13 Trustee Regarding Affidavit of Non-payment, dated August 27, 2001-Bankruptcy case file).
23. Government Exhibit 8 (Order Dismissing Case, dated October 12, 2001-Bankruptcy case file), at 1-2.

24. Government Exhibit 6 (Creditor letter, dated August 8, 2000).
25. *Id.*
26. Government Exhibit 5 (Equifax Credit Report, dated March 26, 2002), at 7.
27. Tr., at 25, 27, 45.
28. Government Exhibit 6, *supra* note 24.
29. Tr. at 28-29. In June 2002, Applicant promised to make arrangements to "repay this loan." Government Exhibit 2, *supra* note 17, at 3. In October 2003, he declared "no payments will be made." Government Exhibit 3 (Interrogatory Answers, dated October 1, 2003), at 3.
30. Government Exhibit 5, *supra* note 26, at 8.
31. Creditor letter, dated June 11, 2004, (Attachment to Response to SOR).
32. *Id.*; Applicant Exhibit F (Creditor letter, dated April 1, 2005); Tr., at 29, 35.
33. Tr. at 30.
34. Government Exhibit 4 (Equifax Credit Report, dated April 29, 2004), at 1; Government Exhibit 5, *supra* note 26, at 9.
35. Government Exhibit 2, *supra* note 17, at 3.
36. Tr., at 35.
37. Government Exhibit 2, *supra* note 17, at 3.
38. Federal Direct Loan Program Final Demand Notice, dated September 21, 2003, attached to Government Exhibit 3, *supra* note 29.
39. *Id.*
40. Applicant Exhibit D (Bank Account Transaction History, undated). The first such payment is reflected as having taken place on October 18, 2004, with a payment of \$50.00.
41. Tr., at 37-38; *Id.*
42. Tr., at 39.
43. Government Exhibit 3, *supra* note 29, at 2.
44. Tr., at 39.
45. Government Exhibit 3, *supra* note 29, at 2.
46. Tr. at 39.
47. Government Exhibit 2 (Personal Financial Statement, dated June 21, 2002), *supra* note 17, at 4.
48. Government Exhibit 3, *supra* note 29, at 4.
49. *Id.*

50. Tr., at 48.

51. Government Exhibit 3, *supra* note 29, at 4; Tr., at 48.

52. Tr., at 48.

53. Government Exhibit 2, *supra* note 17, at 4.

54. Tr., at 46.

55. Tr., at 47.

56. Government Exhibit 1, *supra* note 1, at 9.

57. Applicant Exhibit C (Letter from Lead/co-worker, dated November 20, 2003).

58. *Id.*

59. Exec. Or. 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" (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.)