

DATE: August 5, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-11494

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Robert J. Tuider, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Thirty-one-year-old Applicant's relatively brief history of outstanding financial indebtedness, in the approximate amount of \$3,341.00, due primarily to his neglect and laziness, has been mitigated by his previous and more recent efforts to fully satisfy all such debts either before the issuance of the Statement of Reasons or before the hearing, as well as his new attentiveness to his finances. The questions and doubts as to his security eligibility and suitability have been satisfied. Clearance is granted.

STATEMENT OF THE CASE

On January 10, 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 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 February 15, 2003, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was initially assigned to another Administrative Judge on March 31, 2003, but due to caseload considerations, was reassigned to, and received by, this Administrative Judge on June 4, 2003. A notice of hearing was initially issued on April 15, 2003, scheduling the hearing for May 6, 2003, but it was subsequently cancelled. Another notice of hearing was issued on June 4, 2003, and the hearing was held before me on June 25, 2003. During the course of the hearing, seven Government exhibits, and one Applicant exhibit, consisting of a large number of documents, and the testimony of one Applicant witness (the Applicant), were received. The transcript (Tr.) was received on July 1, 2003.

FINDINGS OF FACT

Applicant has denied two of the factual allegations pertaining to financial matters under Guideline F (subparagraphs 1.a. and 1.e.). Those admissions are incorporated herein as findings of fact. He has denied the remaining allegations (subparagraphs 1.b. through 1.d., and 1.f. through 1.i.).

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 31-year-old employee of a defense contractor seeking to obtain a security clearance.

Once upon a time, Applicant became neglectful and lazy, and as a result, his finances fell into disorder.⁽¹⁾ While he paid his normal living expenses--rent, utilities, etc.--on time, he often permitted his other bills to remain unpaid for substantial periods, not because he lacked the money to pay those bills, but because of his neglect and laziness.⁽²⁾ With exceptions, he generally paid those outstanding bills once a year.⁽³⁾

In March 2000, Applicant completed a Security Clearance Application (SF 86) and indicated he previously had three financial obligations which had, at some point, been over 180 days delinquent:⁽⁴⁾

One of those debts, with a national health club more fully identified in the SOR (subparagraph 1.a.), was incurred in August 1997, in the amount of \$500.00.⁽⁵⁾ Applicant contended he had initially paid off that debt in 1998-99,⁽⁶⁾ but conceded he had no proof of such payment.⁽⁷⁾ He made his final payment of \$200.00 in April 2003, and the account was closed to the satisfaction of the creditor.⁽⁸⁾ The account does not appear in any of the reports of credit entered into evidence.

Another debt, a doctor's bill eventually assigned for collection, more fully identified in the SOR (subparagraph 1.b.), was incurred in March 1999, in the amount of \$154.00.⁽⁹⁾ Applicant contended he had paid off that debt in October 1999,⁽¹⁰⁾ but again conceded he had no proof of such payment.⁽¹¹⁾ Nevertheless, there is no evidence to rebut his contention. The account does not appear in any of the reports of credit entered into evidence.

The third debt listed in the SF 86, an internet company bill, identified by Applicant as a "phone bill," more fully identified in the SOR (subparagraph 1.d.), was incurred in March 1999, in the amount of \$80.00.⁽¹²⁾ Applicant contended he had paid off that debt in October 1999,⁽¹³⁾ but again conceded he had no proof of such payment.⁽¹⁴⁾ Nevertheless, there is no evidence to rebut his contention. The account does not appear in any of the reports of credit entered into evidence.

In addition to the three debts discussed above, Applicant had a number of other previously overdue financial obligations which did appear in various reports of credit pertaining to Applicant:

Applicant's corporate credit card,⁽¹⁵⁾ more fully identified in the SOR (subparagraph 1.c.), was opened in his name in December 1999, and it reached a high balance of \$2,360.00. As of February 2001, the account was current.⁽¹⁶⁾ However, by December 2001, it was reported \$352.00 180 days delinquent.⁽¹⁷⁾ In his Response to SOR, Applicant stated he had paid off the outstanding debt of \$301.00--the amount indicated as past due in the SOR.⁽¹⁸⁾ During the hearing, Applicant contended there was now a zero balance, as purportedly reflected in "the credit report."⁽¹⁹⁾ He was mistaken, because to the contrary, a recent Report of Credit indicates, as of February 2003, the account balance is \$2,339.00, and it is "paid or paying as agreed."⁽²⁰⁾ Thus, I find this account to be in a current status rather than delinquent.

Applicant was indebted to a local hospital, more fully identified in the SOR (subparagraph 1.e.), in the amount of \$1,684.00, for professional services rendered to Applicant, during two separate surgeries, in about August 2000.⁽²¹⁾ A dispute arose when the bills arrived for similar services with disparate charges. Applicant paid the smaller of the two

bills but fought the larger one for as long as he could. He eventually became exhausted over the dispute and simply ignored the debt. (22) As a result, the indebtedness was characterized as a "bad debt," and referred to a collection agency in May 2001. (23) In February 2002, Applicant stated he intended to pay the balance the following summer. (24) The account, by then in the amount of \$1,892.31, including principal and interest, was paid off by Applicant in March 2003. (25)

Applicant was indebted to a national department store, more fully identified through another name in the SOR (subparagraph 1.f.), on a revolving account, in the amount of \$183.00, first incurred in about October 1995. (26) The account was charged off in February 2002. (27) That same month, Applicant stated he intended to pay the balance as soon as he could. (28) By February 2003, Applicant paid off the entire outstanding balance to the creditor's satisfaction, (29) and the account delinquency was deleted from his report of credit.

Applicant was indebted to national fast food chain, more fully identified in the SOR (subparagraph 1.g.), in the amount of \$55.00, for a \$15.00 check written in 1999 on an account which was subsequently closed at the time he graduated, before the check was processed. (30) He had neglected to advise the bank of his forwarding address, and as a result, never received notification of the bounced check, or its collection status, until about three years later. (31) In February 2002, Applicant stated he made arrangements, with a collection agency acting for the creditor, to pay the balance. (32) The entire amount was paid by him and the account has a zero balance. (33)

Applicant was indebted to a national department store, more fully identified in the SOR (subparagraph 1.h.), in the amount of \$380.00, on a revolving charge account opened in 1996. In February 2002, Applicant stated he intended to pay the balance as soon as he could. (34) In March 2002, Applicant paid the entire remaining balance. (35)

In February 2002, when he completed a monthly financial statement, Applicant's net remainder, after deducting monthly expenses from monthly net income, was a negative \$103.00, (36) indicating to the Government an inability to pay all of his debts. Since taking more active and attentive control over his finances, Applicant now has a positive remainder of \$964.00. (37)

Applicant has been employed as a hardware engineer by a government contractor since January 2000. The quality of his performance was not developed.

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 the issuance of the clearance is "clearly consistent with the interests of national security," ⁽³⁸⁾ 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 drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided 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. As set forth above, on its face, seemingly supported by various reports of credit, ⁽³⁹⁾ because he was neglectful and lazy, Applicant appeared to owe a variety of creditors varying amounts on a number of overdue financial obligations which had either been paid off, characterized as bad debts, or sent for collection. That conduct, without more, gives rise to 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*). Furthermore, his issuance of a check which eventually bounced when Applicant closed the account, gives rise to DC E2.A6.1.2.2. (*deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust*).

Some of the debts supposedly owed by Applicant were unsupported by any documentary evidence, including invoices or references in reports of credit, and their existence rested solely on Applicant's memory. Their satisfaction, though likewise unsupported by documentary evidence constituting proof of payment, remain un rebutted by the Government. The remaining debts--for which there are either invoices, letters, or identification in various reports of credit--were, either before the issuance of the SOR, or shortly thereafter, resolved by Applicant, with such efforts by him being confirmed by independent verification. And now, Applicant has a positive monthly remainder of \$964.00.

Applicant finally realized his prior practices in dealing with creditors had been foolish, and acknowledged this security clearance review process had furnished him a valuable lesson, ⁽⁴⁰⁾ motivating him to take efforts to avoid similar trouble in the future. ⁽⁴¹⁾ Applicant's previous and

continuing efforts to resolve all past outstanding financial obligations, as well as current obligations, bring this matter within Financial Considerations Mitigating Condition (MC) E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Under these circumstances, Applicant has, through evidence of extenuation and explanation, successfully mitigated or overcome the Government's case. Accordingly, allegations 1.a. through 1.i. of the SOR are concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is 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: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Robert Robinson Gales

Chief Administrative Judge

1. Government Exhibit 4 (Statement, dated February 5, 2002), at 4.

2. *Id.*

3. *Id.*

4. Government Exhibit 1 (Security Clearance Application, dated March 9, 2000), at 9-10.

5. *Id.*

6. Tr. at 21.

7. *Id.*, at 22.

8. Applicant Exhibit A--Tab 1 (Letter from creditor, dated April 28, 2003), at 5.

9. Government Exhibit 1, *supra* note 4, at 10.

10. *Id.*; Tr. at 23.

11. Tr. at 23.

12. Government Exhibit 1, *supra* note 4, at 10.

13. *Id.*; Tr. at 23.

14. Tr. at 23.

15. Applicant initially thought this indebtedness had something to do with a student loan which he subsequently resolved by having the payments deferred. In this regard, *see* Government Exhibit 4, *supra* note 1, at 4. He eventually realized he was concerned with the wrong account.

16. Government Exhibit 2 (TRW Report of Credit, dated February 2, 2001), at 2.

17. Applicant Exhibit A--Tab 3 (Experian Report of Credit, dated March 4, 2003), at 3.

18. Applicant's Response to SOR, dated February 19, 2003. That amount is identical to the balance appearing in Government Exhibit 3 (TRW Report of Credit, dated January 23, 2002), at 2.

19. Tr. at 23.

20. Applicant Exhibit A--Tab 3 (Trans Union Report of Credit, dated March 24, 2003), at 2.

21. Government Exhibit 2, *supra* note 16, at 2.

22. Tr. at 47.

23. Applicant Exhibit A--Tab 3 (Trans Union Report of Credit), *supra* note 20, at 2.

24. Government Exhibit 4, *supra* note 1, at 5.

25. Applicant Exhibit A--Tab 1 (Letter from creditor, dated April 10, 2003), at 3.

26. Government Exhibit 2, *supra* note 16, at 4.

27. Applicant Exhibit A--Tab 3 (Experian Report of Credit), *supra* note 17, at 4.

28. Government Exhibit 4, *supra* note 1, at 5.

29. Applicant Exhibit A--Tab 1 (Letter from creditor, dated February 13, 2003), at 4.

30. Tr. at 31.

31. *Id.*

32. Government Exhibit 4, *supra* note 1, at 5.

33. Applicant Exhibit A--Tab 3 (Letter from creditor, dated March 20, 2003), at 25.

34. Government Exhibit 4, *supra* note 1, at 5.

35. Applicant Exhibit A--Tab 3 (Trans Union Report of Credit), *supra* note 20, at 3; Tr. at 49.

36. Government Exhibit 4, *supra* note 1, at 6.

37. Tr. at 25; Applicant Exhibit A (monthly financial statement, undated), at 2.

38. See 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" (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.)

39. The quality and usefulness of three such recently generated documents--reports of credit issued by Trans Union (Government Exhibit 5), Experian (Government Exhibit 6), and Equifax (Government Exhibit 7)--is such that I found them to be garbled, internally inconsistent, with minimum indicia of reliability, and without a more structured format and clear guidance of the meaning and significance of some entries, not worthy of significant consideration. On the other hand, the older reports of credit issued by TRW (Government Exhibits 2 and 3), as well as the newer reports supplied by Applicant--Trans Union, Experian, and Equifax (Applicant Exhibit A), were easier to read and understand.

40. Tr. at 26.

41. *Id.* at 51