

DATE: October 14, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-16061

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esquire, Department Counsel

FOR APPLICANT

Daniel Erwin, Personal Representative

SYNOPSIS

Twenty-nine-year-old Applicant with a lengthy history of ignoring his financial obligations and providing various promises and plans to resolve his debts, in fact made little effort to address those obligations, even after this security clearance review process commenced. The absence of any timely efforts to resolve his debts and too many unfulfilled promises to do so, raise doubts about his security eligibility and suitability. Clearance is denied.

STATEMENT OF THE CASE

On November 17, 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 response, dated December 29, 2003, Applicant answered the SOR allegations and requested a hearing. The case was assigned to me on August 2, 2004. A notice of hearing was issued on August 2, 2004, and I convened the hearing on August 19, 2004. During the hearing, three Government exhibits and two Applicant exhibits, and Applicant's testimony were received. The transcript (Tr.) was received on September 10, 2004.

RULINGS ON PROCEDURE

On August 12, 2004, 10 days after the issuance of the notice of hearing, an attorney claiming to represent Applicant submitted an Entry of Appearance via facsimile. Accompanying the Entry of Appearance was a Motion for Continuance stating said attorney had recently been hired and "is unavailable to attend said hearing." The Motion contained a comment that Department Counsel had interposed no objection to the requested continuance. A copy of both the Entry

and the Motion were furnished Department Counsel.

Upon consideration of Applicant's Motion for Continuance, and in light of nine months of inaction since Applicant received the SOR, i.e., failing to timely secure the services of legal counsel; and in light of actual notice furnished to said counsel that the hearing had already been scheduled for a date certain, at which time said counsel should have been aware of existing scheduling conflicts; I decided that timely good cause had not been shown and the Motion for Continuance was denied. That decision was immediately forwarded to both Applicant's attorney and the Department Counsel.

On August 18, 2004, Applicant's attorney submitted a Motion to Withdraw, via facsimile, and stated Applicant had requested such action to enable a personal representative to represent him at the hearing. I granted the motion the following day.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to financial matters under Guideline F (subparagraphs 1.a. through 1.f.). Those admissions are incorporated herein as findings of fact.

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

Applicant is a 29-year-old employee of a defense contractor seeking to obtain a security clearance.

For some unexplained reason, Applicant's financial situation started to deteriorate at some point during the late 1990s. He fell behind in his monthly payments and many of his accounts became delinquent, were closed by the creditor, charged off, or sent to collection. In April 2002, when he completed a Security Clearance Application (SF 86),⁽¹⁾ Applicant disclosed a July 1997 judgment in the amount of \$1,624.00; a July 1998 otherwise unspecified repossession in the amount of \$12,500.00; and two accounts (opened in 1996 and 1999, respectively) which were 180 days past due.

When shown a copy of his credit report and interviewed by a Special Agent of the Defense Security Service (DSS) two weeks later, Applicant acknowledged the debts reflected therein, and indicated one of the debts was in the process of being paid off. He also disputed the judgment he had previously reported in his SF 86 and denied the matter had ever gone that far.⁽²⁾ In his Monthly Financial Statement furnished to DSS, Applicant identified seven debts and referred to them as current.⁽³⁾ He also indicated he was in the process of setting up a bill consolidation program with Consumer Credit Counseling Services (CCCS) and intended to pay off all of his debts except for house and car payments.⁽⁴⁾

In May 2003, in response to financial interrogatories furnished by DOHA, Applicant indicated he was trying to obtain a second mortgage to pay off his debts.⁽⁵⁾ He said he was "trying to fix this problem, but things keep happening."⁽⁶⁾ He contended he had been advised by persons unidentified to obtain the second mortgage rather than continue with the CCCS debt consolidation plan. The SOR identifies six of those delinquent accounts totaling nearly \$11,000.00.

Applicant was indebted to a bank (SOR ¶ 1.a.) in the amount of \$12,888.00, of which \$6,637.00 was past due, for an installment loan--to finance the purchase of an automobile--opened in April 2001.⁽⁷⁾ The account was 60 days late on five occasions and 30 days late on nine occasions before it was charged off as a bad debt in April 2003.⁽⁸⁾ Applicant claims that commencing in March 2004, he started making monthly payments of \$200.00.⁽⁹⁾ Other than his oral testimony and a Statement of Income and Expenses,⁽¹⁰⁾ he has offered no documentation in support of his claim.

Applicant was indebted to another bank (SOR ¶ 1.b.) in the amount of \$1,657.38, for a credit card account opened in December 1996.⁽¹¹⁾ The account was 120 days late on six occasions and 90 days late on two occasions before \$1,313.00 was charged off and eventually sent to collection.⁽¹²⁾ Applicant made no effort to arrange payments with the creditor and it remains unpaid. He intends to pay the account off as soon as he can "without getting behind on any other bills," but could offer no definite timetable other than to say he hoped to satisfy three or four debts before the end of the year.⁽¹³⁾

Applicant was indebted to another bank (SOR ¶ 1.c.) in the amount of \$13,002.00--to finance the purchase of a truck--on an account opened in March 1997. ⁽¹⁴⁾ He found himself unable to continue making the monthly payments and the account was considered a bad debt. ⁽¹⁵⁾ The truck was repossessed in 1999, leaving an unpaid balance of \$556.00. ⁽¹⁶⁾ Applicant made no effort to arrange payments with the creditor and it remains unpaid. He intends to pay the account off as soon as he can collect sufficient funds to do so, ⁽¹⁷⁾ but once again could offer no definite timetable.

Applicant was indebted to another bank (SOR ¶ 1.d.) in the amount of \$1,541.00, for a credit card account opened in June 2001. ⁽¹⁸⁾ The account was 120 days late on one occasion and 90 days late on another occasion before it was charged off as a bad debt and eventually sent to collection. ⁽¹⁹⁾ Applicant claimed he was making monthly payments in the amount of \$50.00 ⁽²⁰⁾ in April 2002, but he fell behind and couldn't keep up with those payments. By May 2003, he was making no further payments, and since that time, has made no effort to arrange payments with the creditor. Applicant hopes to make arrangements to pay off the entire debt by the end of the year. ⁽²¹⁾

Applicant was indebted to still another bank (SOR ¶ 1.e.) in the amount of \$377.00, for a credit card account opened in September 2001. ⁽²²⁾ The account was 120 days late on two occasions and 90 days late on one occasion before it was charged off as a bad debt and eventually sent to collection. ⁽²³⁾ Applicant has made no payments on this account since it was charged off, ⁽²⁴⁾ and made no effort to arrange payments with the creditor. Applicant hopes to make arrangements to pay off the entire debt by the end of the year. ⁽²⁵⁾

Applicant was indebted to an nationwide paging company (SOR ¶ 1.f.) in the amount of \$46.00, for paging service opened in December 1999. ⁽²⁶⁾ The account was unpaid as of February 2000 when it was referred to collection. ⁽²⁷⁾ In May 2003, Applicant initially contended he had paid the account, ⁽²⁸⁾ but during the hearing indicated he hoped to pay off the account by the end of the following week. ⁽²⁹⁾ He has offered no documentation to support a payment of the debt.

Applicant and his wife, whom he married in July 2001, currently have an average net monthly income of \$3,072.43, ⁽³⁰⁾ and total average monthly expenses of \$2,717.98, ⁽³¹⁾ leaving \$354.45 for discretionary spending. ⁽³²⁾ Included in the expense figure is a monthly payment of \$200.00 to the creditor referred to in subparagraph 1.a. of the SOR. They own one vehicle--a 2003 GMC Sierra--financed by his wife's parents, ⁽³³⁾ for which he makes monthly payments of \$467.00. ⁽³⁴⁾

Applicant has been employed as a dispatcher by a government contractor since July 2000. According to his supervisor, he is dependable, loyal, conscientious, and flexible. He is also well respected and trusted. ⁽³⁵⁾

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," [\(36\)](#) 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:

The government has established its case under Guideline F. As indicated above, for some unexplained reason Applicant's financial situation deteriorated in the late 1990s. Accounts became delinquent and were closed by creditors, charged off, or sent to collection. He chose to ignore his creditors and took no action to resolve his overdue financial obligations. In April 2002, upon being questioned about his finances by DSS, Applicant furnished inconsistent information regarding some accounts, and claimed to be in the process of setting up a bill consolidation program with

CCCS to resolve most of his debts. That process was eventually abandoned. One year later, in May 2003, Applicant changed his story and indicated he would pay off his debts with a second mortgage he was attempting to obtain. That process was eventually abandoned as well. During the hearing, Applicant stated he intended to pay off most of the accounts by the end of the year by using funds from his 401(k).⁽³⁷⁾

With the exception of three months of unemployment in December 1999 to March 2000, Applicant has been gainfully employed, without interruption, since at least 1995. Applicant attributes some of his financial difficulties to caring for his younger brother over an extended period, and claims to have gone through a "rough period" when his mother died and his girlfriend left him. Regardless of the cause, Applicant continued to incur debts without making any effort to pay them off in a timely manner. In fact, with the exception of possibly two creditors, he apparently made no effort whatsoever to pay any creditor. And he has offered no evidence that those two creditors have been paid. His failure to satisfy his outstanding financial obligations gives 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's financial situation and difficulties also bring this matter within Financial Considerations Mitigating Condition (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)*). However, 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*). Applicant's vacillation over a substantial period of time as to how to resolve his financial dilemma, running through the possibilities of debt consolidation, second mortgage, and 401(k), with no action being taken simply indicates promises made but not kept.

Absent financial counseling, or something to motivate him to remain current in expenditures and alter his fiscal irresponsibility, the most recent promises appear to be more cosmetic than meaningful and long-lasting. 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.f. 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

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: 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, dated April 4, 2002).

2. Government Exhibit 2 (Statement, dated April 19, 2002), at 1.

3. *Id.*, at 2.

4. *Id.*, at 1.

5. Government Exhibit 3 (Financial Interrogatory, dated May 23, 2003), at 2.

6. *Id.*

7. *Id.* (Credit Report, dated May 21, 2003, attached to Financial Interrogatory), at 2.

8. *Id.*

9. Tr., at 21.

10. Applicant Exhibit B (Statement of Income and Expenses, undated).

11. Government Exhibit 3 (Credit Report), *supra* note 5, at 3.

12. *Id.*

13. Tr., at 25.

14. Government Exhibit 3 (Credit Report), *supra* note 5, at 3-4.

15. *Id.*

16. *Id.*

17. Tr., at 33.

18. Government Exhibit 3 (Credit Report), *supra* note 5, at 5.

19. *Id.*

20. Tr., at 35. It should be noted, however, that the Credit Report reflects the actual monthly payment amount as \$46.00.
Id.

21. Tr., at 34.

22. Government Exhibit 3 (Credit Report), *supra* note 5, at 5.

23. *Id.*

24. Tr., at 36.

25. Tr., at 36.

26. Government Exhibit 3 (Credit Report), *supra* note 5, at 1.

27. *Id.*

28. Government Exhibit 3 (Financial Interrogatory, dated May 23, 2003), *supra* note 5, at 2.

29. Tr., at 36.

30. Applicant Exhibit B, *supra* note 10, at 2.

31. *Id.*, at 3.

32. *Id.*; Tr., at 40.

33. Tr., at 41.

34. Applicant Exhibit B, *supra* note 10, at 2.

35. Applicant Exhibit A (Letter from employer, dated August 17, 2004).

36. 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.)

37. Tr., at 34.