

KEYWORD: Financial

DIGEST: Thirty-eight-year-old Applicant with a lengthy history of ignoring his financial obligations--largely attributed to varied periods of unemployment and the loss of his wife's income because of their separation--did not address those obligations until he received notification that the security clearance review process had commenced. He immediately filed for bankruptcy under Chapter 7 and had most of his debts discharged. The absence of any timely efforts to resolve his debts and the absence of any financial counseling raise grave questions and doubts as to his security eligibility and suitability. Clearance is denied.

CASENO: 02-16544.h1

DATE: 07/30/2004

DATE: July 30, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-16544

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Thirty-eight-year-old Applicant with a lengthy history of ignoring his financial obligations--largely attributed to varied periods of unemployment and the loss of his wife's income because of their separation--did not address those obligations until he received notification that the security clearance review process had commenced. He immediately filed for bankruptcy under Chapter 7 and had most of his debts discharged. The absence of any timely efforts to resolve his debts and the absence of any financial counseling raise grave questions and doubts as to his security eligibility and suitability. Clearance is denied.

STATEMENT OF THE CASE

On August 6, 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, notarized September 8, 2003, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on June 3, 2004. A notice of hearing was issued on June 3, 2004, and the hearing was held before me on June 22, 2004. During the course of the hearing, seven Government exhibits and one Applicant exhibit, and the testimony of two Applicant witnesses (including the Applicant) were received. One additional Applicant exhibit was received after the hearing within the time frame granted to Applicant. The transcript (Tr.) was received on June 29, 2004.

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, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 38-year-old employee of a defense contractor seeking to obtain a security clearance. He had previously been granted a SECRET security clearance in November 1992,⁽¹⁾ but it was revoked following a DOHA hearing in June 2000 and the resulting unfavorable decision issued in July 2000.⁽²⁾

Applicant had previously served as a parachute rigger on active duty with the U.S. Army from June 1988 until October 1997.⁽³⁾ However, because of a variety of misconduct involving adultery, indecent acts, indecent exposure, sodomy, and conduct unbecoming a non-commissioned officer--all in relation to his dating married women--Applicant was disciplined by non-judicial punishment on two occasions,⁽⁴⁾ and eventually removed from active duty and given a General Discharge (Under Honorable Conditions).⁽⁵⁾ Before, during, and after his military service he also had a number of alcohol-related incidents which resulted in administrative or civilian judicial action.⁽⁶⁾

Upon his discharge, Applicant immediately secured a job as a civilian parachute rigger with a government contractor at the same military facility where he had served on active duty.⁽⁷⁾ He maintained that job until September 2000,⁽⁸⁾ when he was fired as a result of his security clearance being denied or revoked.⁽⁹⁾ He managed to obtain temporary employment for three months before he was laid-off in November 2000.⁽¹⁰⁾ Applicant was unemployed for the next five months,⁽¹¹⁾ but was able to obtain a position as a parachute rigger with another government contractor in March 2001.⁽¹²⁾ He maintained that position for one year until March 2002, when he moved to his current position and employer--the same one who hired him upon his discharge from the U.S. Army.⁽¹³⁾

Applicant contends his finances started to deteriorate when he lost his job in September 2000.⁽¹⁴⁾ The situation worsened when he was unemployed, and took an additional turn for the worse when he and his second wife started experiencing marital discord. Because of that discord, they eventually separated and he lost her previously available income.⁽¹⁵⁾ As a result, Applicant fell behind in his monthly payments and many of his accounts became delinquent, were closed by the creditor, charged off, sent to collection, became judgments, or sold.⁽¹⁶⁾ His residence was lost through foreclosure in 2002.⁽¹⁷⁾

Applicant's financial situation by 2003 was, as characterized by Applicant, "less than good."⁽¹⁸⁾ His May 2003 Credit

Report indicates 11 original or derivative (collection agency or subsequent purchaser) delinquent accounts. The SOR identifies nine of those delinquent accounts totaling \$111,140.00, of which \$92,820.00 was a mortgage.

Applicant was indebted to a national department store, (more fully identified in the SOR (subparagraph 1.a.), in the amount of \$8,108.00, for a credit account opened in May 1999.⁽¹⁹⁾ He used the account primarily to purchase household appliances.⁽²⁰⁾ Applicant made no effort to arrange payments with the creditor and it remained unpaid.

Applicant was indebted to a state public electric utility service, more fully identified in the SOR (subparagraph 1.b.), in the amount of \$30.00, for an account opened in July 2001.⁽²¹⁾ Applicant made no effort to arrange payments with the creditor and it remained unpaid until some unspecified date. Applicant initially claimed he satisfied the debt,⁽²²⁾ but offered no documents to support his claim, and later acknowledged he hadn't paid the bill.⁽²³⁾

Applicant was indebted to a national financial service company, more fully identified in the SOR (subparagraph 1.c.), in the amount of \$5,362.00, for a credit card account opened in July 2000.⁽²⁴⁾ He used the credit card primarily to purchase bicycle racing equipment for his stepson.⁽²⁵⁾ Applicant made no effort to arrange payments with the creditor and it remained unpaid.

Applicant was indebted to an apartment complex, more fully identified in the SOR (subparagraph 1.d.), in the amount of \$1,245.00, for a lease account opened sometime prior to October 2002.⁽²⁶⁾ Applicant broke his lease to move elsewhere and chose not to pay the required \$450.00 monthly rent.⁽²⁷⁾ Applicant made no effort to arrange payments with the creditor and it remained unpaid.

Applicant was indebted to a satellite television company, more fully identified in the SOR (subparagraph 1.e.), in the amount of \$185.00, for satellite television service opened sometime prior to September 2002.⁽²⁸⁾ Applicant made no effort to arrange payments with the creditor and it remained unpaid.

Applicant was indebted to an HVAC company, more fully identified in the SOR (subparagraph 1.f.), in the amount of \$426.00, for air conditioning service and new components sometime prior to January 2002.⁽²⁹⁾ Applicant made no effort to arrange payments with the creditor and it remained unpaid.

Applicant was indebted to a local medical center, more fully identified in the SOR (subparagraph 1.g.), in the amount of \$589.00, for some unspecified service when his wife underwent an operation sometime prior to February 2001.⁽³⁰⁾

Applicant made no effort to arrange payments with the creditor and it remained unpaid.

Applicant purchased a residence in May 2000. He soon found himself unable to make the required monthly mortgage payments of \$775.00, and vacated the residence during the spring of 2001.⁽³¹⁾ As noted above, he lost that residence through foreclosure in about 2002. The remaining balance owed to a national financial institution, more fully identified in the SOR (subparagraph 1.h.), on the unpaid mortgage at the time of foreclosure was \$92,820.00.⁽³²⁾ After he stopped making payments, Applicant made no effort to arrange payments with the creditor and it remained unpaid.

Applicant was indebted to another national financial institution, more fully identified in the SOR (subparagraph 1.i.), in the amount of \$2,375.00, for purchases made on a credit card account opened in July 2000.⁽³³⁾ In June 2002, the creditor obtained a civil judgment against Applicant.⁽³⁴⁾ Applicant made no effort to arrange payments with the creditor and it remained unpaid.

On August 27, 2003, one week after receiving the SOR, Applicant filed a Voluntary Petition for bankruptcy under Chapter 7.⁽³⁵⁾ He listed \$115,383.61 in total liabilities and \$9,250.00 in total assets.⁽³⁶⁾ The 10 creditors holding unsecured nonpriority claims included all those identified in the SOR, except subparagraph 1.b. Applicant's debts were discharged on January 6, 2004.⁽³⁷⁾

At the time of the hearing, despite his earlier discharge in bankruptcy, Applicant still had several outstanding financial obligations. He owed the Internal Revenue Service (IRS) \$883.00 for unpaid income tax, but had not yet entered into payment arrangements with the IRS.⁽³⁸⁾ He subsequently indicated he had made one \$200.00 payment to the IRS on July 1, 2004,⁽³⁹⁾ and agreed to pay the IRS monthly payments of \$100.00 for the next five months. He also had two outstanding debts for medical services received, in the amounts of \$186.00 and \$65.00.⁽⁴⁰⁾ He subsequently indicated he had made a payment to one creditor, in the amount of \$60.00, and supported that payment by a copy of the duplicate check he had written.⁽⁴¹⁾ The other creditor was purportedly paid an unspecified amount by bank debit card, but no documents were offered to support his contention.

Applicant currently makes an hourly wage of \$20.43, and works a normal 40-hour week.⁽⁴²⁾

He owns two vehicles--a 1995 Chevrolet S10 and a 1999 Chevrolet Malibu--"free and clear."⁽⁴³⁾ He no longer has any credit cards.⁽⁴⁴⁾

Applicant was previously married in 1992, and that relationship was annulled in 1995. He married again in 1999, but separated, and is in the process of getting a divorce. He resides with his girlfriend in her trailer.

As noted above, Applicant has been employed by a government contractor since March 2002, and was previously employed by the same contractor. According to his supervisor--a longtime colleague both in and out of the military--he is reliable and thorough.

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," [\(45\)](#) 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. Applicant's finances have been in disarray since he first lost his security clearance, and then his job in 2000. Even though he was able to obtain temporary and permanent employment for varying periods, he did suffer through relatively brief periods of unemployment. However, Applicant has been gainfully employed, without interruption, since March 2001. Applicant attributes his financial difficulties to losing his security clearance and job as well as losing his wife's income after their separation. Regardless of the causation, Applicant continued to incur debts without making any effort to pay them off in a timely manner. In fact, he apparently made no effort whatsoever to pay any creditor. Moreover, his deteriorating financial condition did not appear to motivate him to modify his lifestyle. He currently owns two vehicles free and clear. Applicant sought no financial counseling and simply ignored his obligations. He lost his residence to foreclosure and his credit lines were closed. His actions in failing to satisfy his outstanding financial obligations, until the proverbial "eleventh hour," 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*). And, because of the loss of his earlier security clearance, FC DC E2.A6.1.2.5. (*financial problems that are linked to gambling, drug abuse, alcoholism, or other issues of security concern*).

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 absolute absence of any timely 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*). It is accurate that Applicant has, by now, resolved his past debts through bankruptcy discharge under Chapter 7. It is also true that until after the hearing, Applicant took no action to resolve newer outstanding debts.

In the absence of any financial counseling, or something to motivate him to remain current in expenditures and alter his fiscal irresponsibility, the very recent resolution of Applicant's financial problems seem to be more cosmetic than meaningful and long-lasting. Under these circumstances, I believe insufficient time has passed for me to conclude that Applicant has turned his life and lifestyle around sufficiently for me to be confident that his financial irresponsibility is a thing of the past which will not recur. 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. through 1.j. 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

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: 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 (Questionnaire for National Security Positions (SF 86), dated July 13, 1998), at 8.
2. ISCR Case No. 00-0019 (Jul. 13, 00).
3. Government Exhibit 1, *supra* note 1, at 3, 7.
4. Government Exhibit 2 (Statement of Subject, dated September 30, 1999), at 2-3.
5. *Id.*, at 3.

6. Government Exhibit 5 (Statement of Subject, dated January 16, 2003), at 1-3.

7. Government Exhibit 7 (Security Clearance Application, dated April 18, 2002), at 4.

8. *Id.*

9. Government Exhibit 5, *supra* note 6, at 4.

10. *Id.*

11. Government Exhibit 7, *supra* note 7, at 4.

12. *Id.*

13. *Id.*

14. Government Exhibit 5, *supra* note 6, at 4.

15. *Id.*

16. Government Exhibit 6 (Experian Credit Report, dated May 13, 2003), at 1-3.

17. Government Exhibit 5, *supra* note 6, at 4.

18. *Id.*

19. Government Exhibit 6, *supra* note 16, at 1.

20. Tr., at 23.

21. Government Exhibit 6, *supra* note 16, at 1.

22. Response to SOR, dated September 6, 2003.

23. Tr., at 25.

24. Government Exhibit 6, *supra* note 16, at 1.

25. Tr., at 26.

26. Tr., at 26. Applicant recalled the date to be "around 2002" (Tr., at 26) or "around 2003" (Tr., at 28-29). The account was sent to collection in October 2002 (Government Exhibit 6, *supra* note 16, at 2.).

27. Tr., at 29.

28. The account was sent to collection in September 2002 (Government Exhibit 6, *supra* note 16, at 2.).

29. The account was sent to collection in January 2002 (*Id.*).

30. The account was sent to collection in February 2001 (*Id.*).

31. Tr., at 28.

32. Government Exhibit 6, *supra* note 16, at 2.

33. *Id.*, at 1.

34. *Id.*

35. Applicant Exhibit A (Voluntary Petition, dated August 27, 2003).

36. *Id.*, (Summary of Schedules).

37. *Id.*, (Discharge of Debtor(s), dated January 6, 2004).

38. Tr., at 32.

39. Applicant Exhibit B (Statement, undated, and accompanying duplicate check, dated July 1, 2004).

40. Tr., at 32-33.

41. Applicant Exhibit B, *supra* note 39.

42. Tr., at 35.

43. Tr., at 37.

44. Tr., at 38.

45. 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.)