

DATE: February 27, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-16631

## **DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT ROBINSON GALES**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Catherine Engstrom, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Forty-six-year-old Applicant's finances began to deteriorate for unspecified reasons sometime during 2000. His refusal or inability to remain current on his various accounts resulted in several being closed or charged off as bad debts, or reduced to court judgments. It was not until sometime around May 2003 that he began to explore possible repayment arrangements with a consumer counseling service. After several attempts, a repayment plan was finally initiated in February 2004, long after the SOR was issued. The true status of Applicant's finances is unknown, and there is no clear plan to avoid future financial problems. Accordingly there remain questions and doubts as to his security eligibility and suitability. Clearance is denied.

### **STATEMENT OF THE CASE**

On July 29, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn, written statement, undated, <sup>(1)</sup> Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on December 8, 2003. A complete copy of the file of relevant material (FORM) <sup>(2)</sup> was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. A timely submission was made, and the government offered no objection to any of the documents submitted. The case was assigned to me February 26, 2004.

## FINDINGS OF FACT

Applicant has admitted one, and a portion of another, of the four factual allegations pertaining to financial considerations under Guideline F (subparagraph 1.a. in its entirety, and a portion of subparagraph 1.b.). Those admissions are incorporated herein as findings of fact. He denied the remaining allegations.

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 46-year-old employee of a defense contractor seeking to obtain a security clearance the level of which has not been identified. He had previously been granted a SECRET security clearance in April 1977 while on active military service.

It is unclear as to when Applicant's financial situation became unstable as there is no statement in evidence that might have furnished some explanation or background for his financial difficulties. However, a review of his credit history, as set forth in a 2003 Equifax Credit Report,<sup>(3)</sup> reveals serious financial difficulties arose sometime during 2000. Commencing at some point during that year Applicant apparently ceased paying certain accounts for reasons unspecified, and his inaction eventually resulted in a number of his accounts being closed by the creditor, charged off, or reduced to court judgments. Among the outstanding financial obligations were three or four accounts that are the object of scrutiny because of their security clearance significance.

Applicant resides in an area apparently covered by a homeowners' association for in September 2002 a judgment was entered against him by a homeowners' association (more fully identified in subparagraph 1.a. of the SOR).<sup>(4)</sup> The judgment was for \$1,583.00.<sup>(5)</sup> At some unspecified point, Applicant and an attorney representing the homeowners' association agreed to a repayment plan and Applicant made periodic payments toward the outstanding judgment. By August 2003, after applying Applicant's \$50.00 payment, the balance had been reduced to \$913.32, including attorney's fees and court costs.<sup>(6)</sup> Nothing further is known about the terms or duration of the repayment plan.

A judgment for \$1,356.48,<sup>(7)</sup> including judgment and interest, was entered against him by a law office (more fully identified in subparagraph 1.b. of the SOR) on March 19, 2002.<sup>(8)</sup> The creditor had previously represented Applicant in three separate legal matters involving a dispute in January 1999, a hand gun permit in January 2000, and a witness tampering matter in January 2000,<sup>(9)</sup> and despite numerous demands for payment and promises by Applicant to pay, Applicant failed to pay the amount due, thus leading to the judgment. Despite the presence of the judgment since March 2002, Applicant apparently made no efforts to make payment arrangements or payments until February 2004 when he obtained the services of a nationally known consumer counseling service.<sup>(10)</sup> Under his payment plan, Applicant agreed to pay the creditor \$28.00 per month.<sup>(11)</sup> There is also evidence that Applicant may have previously obtained the services of the consumer counseling service as early as August or September 2003,<sup>(12)</sup> but other than a reference to a repayment plan and an entry in a personal financial statement, dated August 31, 2003,<sup>(13)</sup> there is no other independent evidence to support the existence of the plan or payments to this particular creditor.

Applicant opened an account with a creditor (more fully identified in subparagraph 1.c. of the SOR) in November 1999. The exact nature of the creditor is unknown. The balance on the account eventually rose to \$189.99, and the account was charged off as a bad debt in October 2000.<sup>(14)</sup> Applicant made no efforts to make payment arrangements or payments until February 2004 when he obtained the services of the consumer counseling service.<sup>(15)</sup> Under his payment plan, Applicant agreed to pay the creditor \$10.00 per month.<sup>(16)</sup> There is also evidence that Applicant may have previously obtained the services of the consumer counseling service as early as August or September 2003, but other than a reference to a repayment plan and an entry in the above referenced personal financial statement, there is no other independent evidence to support the existence of the plan or payments to this particular creditor.

Applicant also had a number of other overdue financial obligations that generated a forecast projection for another repayment plan with the consumer counseling service at some time before May 2003. Under that projection, the unpaid  
<sup>(17)</sup>

balance for the 10 accounts listed, none of which are referenced in the SOR, was \$7,328.46, and the estimated monthly payments were to total \$195.00.<sup>(18)</sup> There is no evidence the plan was ever activated.

The budget analysis prepared for Applicant by the consumer counseling service on May 9, 2003 reflected net monthly income of \$3,010.00 and total monthly expenses of \$5,149.86, for a balance of minus \$2,139.86 in discretionary income.<sup>(19)</sup> However, according to Applicant's personal financial statement, completed two weeks later, he and his wife have a monthly net income of \$5,347.60,<sup>(20)</sup> and a net remainder, after making the agreed payments in addition to current financial obligations, of minus \$1,096.81. In August 2003, another financial statement submitted by Applicant indicated identical net monthly income, reduced monthly expenses, over \$2,000.00 less total actual monthly payments, and a positive net remainder of \$1,475.39.<sup>(21)</sup>

Applicant was married in August 1979. Although he is paying child support,<sup>(22)</sup> Applicant has not listed any children in his Security Clearance Application.<sup>(23)</sup>

Applicant has been employed as a project manager by the same government contractor since October 1997. The quality of his work performance has not been characterized.

### 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, pertaining to this adjudicative guideline are set forth and discussed in the conclusions 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,"<sup>(24)</sup> 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 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. Applicant's financial difficulties arose sometime during 2000 when he apparently ceased paying certain accounts for reasons unspecified. That action eventually resulted in a number of his accounts being closed by the creditor, charged off, or reduced to court judgments. While these three or four accounts are the object of scrutiny because of their security clearance significance, there are or were a number of other accounts that were in varying degrees of instability. Despite continuing paychecks for both himself and his wife, Applicant was unable, for whatever reason, to remain current with his bills. Applicant's overall financial situation, initial actions in avoiding payments, refusal to pay bills and judgments, and his subsequent inactivity, gave rise to Financial Considerations Disqualifying Condition (FC 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*).

In May 2003, Applicant explored a potential repayment plan with a consumer counseling service to address other financial obligations. In August or September 2003, after he had received the SOR, Applicant was seemingly motivated to get serious with potential payment arrangements and made a payment to one creditor. No other specifics are available. Finally, in February 2004, he again approached the consumer counseling service, worked out a repayment plan for the accounts set forth in the SOR, and began making minimum payments to the creditors. His very recent efforts seemingly fall within Financial Considerations titigating Condition (FC MC) E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

However, because of what appear to be starts and stops in the consumer counseling repayment process, and questions regarding the true status of Applicant's finances, especially given the variety of personal financial statement data pertaining to available discretionary funds, and the true total of outstanding financial obligations, I conclude FC MC E2.A6.1.3.4. (*the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*), is not available here because there are no clear indications of the type referred to. Likewise, because there is no evidence to support the activation 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)*), that condition does not apply.

Under these circumstances, I find insufficient evidence of timely or positive action on Applicant's part to pay off his outstanding debts. Instead, I find unexplained delays in addressing his outstanding financial obligations and no clear plan to avoid future financial problems. I believe Applicant has failed to mitigate or overcome the Government's case. Accordingly, allegations 1.a. through 1.d. 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

**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.

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Robert Robinson Gales

Chief Administrative Judge

1. The government indicated the document was dated August 31, 2003, but, upon review of the entire document, I have concluded the date is erroneous.
2. The government submitted six items in support of its contentions.
3. Item 6 (Equifax Credit Report, dated June 4, 2003).
4. *Id.*, at 1; Item 2 (Response to SOR, undated), at 2.
5. *Id.*
6. Enclosure 1 (Letter from creditor's attorney, dated August 31, 2003) attached to Item 2.
7. Item 6, *supra* note 3, at 1. The credit report indicates there were two separate judgments, each in an identical amount, entered on the same date, but there is no other evidence to support the government's contention that two separate judgments existed.
8. Enclosure 2 (Affidavit Judgment, dated March 19, 2002) attached to Item 2.
9. Exhibit A-1 to Enclosure 2 (Invoice from creditor, dated June 21, 2001) attached to Item 2.
10. Response to FORM, undated but received by DOHA February 9, 2004 (Authorization and Disclosure Agreement, dated February 4, 2004), at 3.
11. *Id.*, at 5.
12. Enclosure 3 (Letter from certified credit counselor, dated September 8, 2003) attached to Item 2.
13. Enclosure 5 (Personnel [sic] Financial Statement, dated August 31, 2003) attached to Item 2.
14. Item 6, *supra* note 3, at 2.
15. Response to FORM, *supra* note 10, at 3.
16. *Id.*, at 5.

17. Item 5 (Payment Proration and Pay Out Detail, dated May 9, 2003) attached to Answers to Interrogatories, dated May 27, 2003.

18. *Id.*

19. Item 5 (Client Budget Analysis, dated May 9, 2003), attached to Answers to Interrogatories, *supra* note 17.

20. Item 5 (Personnel [sic] Financial Statement, dated May 27, 2003) attached to Answers to Interrogatories, *id.*

21. Enclosure 5, *supra* note 13.

22. Item 5 (Client Budget Analysis), *supra* note 19.

23. Item 4 (Security Clearance Application, dated August 28, 2000).

24. 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.)