

DATE: February 24, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-18975

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Forty-six-year-old Applicant's finances began to deteriorate before his military retirement in July 2000, and his financial situation worsened when he was unable to secure a job until three months later. His inability to remain current on his various accounts resulted in several of them being charged off as bad debts. He entered into payment arrangements with one creditor in December 2001. Despite his promise to make repayment arrangements for three other accounts, Applicant did nothing until motivated to do so nearly a year later when he received the financial interrogatories from DOHA. To his eventual credit, he has now paid off or satisfied one of the accounts and is making regular payments on the other three. Questions and doubts as to his security eligibility and suitability have been satisfied. Clearance is granted.

STATEMENT OF THE CASE

On August 5, 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, notarized September 2, 2003, 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 November 20, 2003. A complete copy of the file of relevant material (FORM) ⁽¹⁾ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. A submission was to be made no later than January 2, 2004, but Applicant did not take advantage of the opportunity. The case was assigned to me on February 23, 2004.

FINDINGS OF FACT

Applicant has admitted three of the four factual allegations pertaining to financial considerations under Guideline F (subparagraphs 1.a. through 1.c.). Those admissions are incorporated herein as findings of fact. He denied the remaining allegation.

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 November 1996 while on active military service.

Applicant served on active duty with the U.S. Navy from July 1980 until July 2000 when he retired.⁽²⁾ Prior to July 2000, Applicant considered his financial situation to be stable.⁽³⁾ However, a review of his credit history, discussed further below, reveals serious financial difficulties existed prior to July 2000. Following his retirement, and continuing for three months until October 2000, Applicant was unable to secure employment and his financial situation deteriorated. He found it necessary to prioritize the bills and continued to pay his mortgage, utilities, and other necessary bills.⁽⁴⁾ At the same time, other bills, such as credit cards, remained unpaid.⁽⁵⁾ As a direct result of both his already shaky finances as well as his handling of his diminished finances during the period of unemployment, in addition to accounts already past due, several other accounts became overdue and were eventually charged off, sent for collection, transferred, or sold by the creditors.⁽⁶⁾ Among the outstanding financial obligations were four accounts which are the object of scrutiny because of their security clearance significance.

Applicant opened an individual revolving credit card account with a national bank (more fully identified in subparagraph 1.a. of the SOR) in August 1996. The balance eventually rose to \$3,851.00, and the account was charged off as a bad debt in November 2000.⁽⁷⁾ The most recent action reported in the Credit Report occurred in March 2000, before he had retired from active duty.⁽⁸⁾ In reality, the payment history for the account indicated it was 90 plus days past due three times before November 2000.⁽⁹⁾ In April 2002, Applicant indicated he was not yet making any payments towards this particular debt but promised to make arrangements with the creditor later in the week.⁽¹⁰⁾ At that time, the unpaid balance was \$2,891.00.⁽¹¹⁾ He apparently took no such actions until one year later when, on May 14, 2003, a check he wrote in the amount of \$100.00 was received by the creditor.⁽¹²⁾ At that time the identified balance was \$3,036.90.⁽¹³⁾ In September 2003, Applicant stated he was making monthly payments of \$100.00, and indicated the outstanding balance was down to \$2,636.90.⁽¹⁴⁾

Applicant opened another individual revolving credit card account with a national bank (more fully identified in subparagraph 1.b. of the SOR) in October 1996. The balance eventually rose to \$7,085.00, and the account was charged off as a bad debt in August 2002.⁽¹⁵⁾ The most recent action reported in the Credit Report occurred in September 2001, over a year after he had retired from active duty and nearly one year after securing employment.⁽¹⁶⁾ The payment history for the account indicated it was 90 plus days past due 10 times before September 2001.⁽¹⁷⁾ No mention of this account was made by Applicant in his statement of April 2002. In June 2003, and again in September 2003, Applicant stated he was making monthly payments of \$100.00, unsupported by any documentation, on an account identified as the same one referred to in the SOR but it appears to be an entirely different account with another bank.⁽¹⁸⁾ Applicant indicated the outstanding balance was \$6,885.16,⁽¹⁹⁾ but the Credit Report reference to the account indicated the outstanding balance was up to \$7,085.00, with a past due balance of \$638.00.⁽²⁰⁾

Applicant opened an individual credit card account (more fully identified in subparagraph 1.c. of the SOR) in February 1997. The balance eventually rose to \$5,000.00, and the account was charged off as a bad debt in April 2003, in the amount of \$4,268.68.⁽²¹⁾ It is unclear when the most recent action on the account occurred because the Credit Report is
⁽²²⁾

silent as to that date. In reality, the payment history for the account indicated it was 90 plus days past due three times before April 2003.⁽²³⁾ In April 2002, Applicant indicated he was not yet making any payments towards this particular debt but promised to make arrangements with the creditor later in the week.⁽²⁴⁾ At that time, the unpaid balance was \$4,946.00.⁽²⁵⁾ He apparently took no such actions until one year later when, on May 8, 2003, a check he wrote in an unspecified amount, claimed by Applicant to be \$100.00, was received by the creditor.⁽²⁶⁾ At that time the identified balance was \$4,268.85.⁽²⁷⁾ In September 2003, Applicant stated he was making monthly payments of \$100.00, and indicated the outstanding balance was down to \$3,968.85.⁽²⁸⁾

Applicant opened an individual revolving credit card account with a national financial services company (more fully identified in subparagraph 1.d. of the SOR) in May 1997. The balance eventually rose to \$2,061.00, and the account was placed for collection as a bad debt. The payment history for the account indicated it was 90 plus days past due four times before April 2003.⁽²⁹⁾ In December 2001, Applicant entered into payment arrangements with the creditor collection agency and agreed to make monthly payments of \$100.00.⁽³⁰⁾ Applicant and the creditor collection agency subsequently agreed to settle the account with a payment of \$375.00, and Applicant made a payment in that amount which was received on March 7, 2003.⁽³¹⁾ The Credit Report confirms the account had been settled and there is a zero balance.⁽³²⁾

According to Applicant's most recent Personal Financial Statement, completed May 27, 2003, he has a monthly net salary of \$2,001.71,⁽³³⁾ and a net remainder, after making the agreed payments in addition to current financial obligations, of \$522.17.

Applicant has two children, born in 1983 and 1985, respectively. He was married in November 1996 and subsequently divorced in December 2000.

Applicant has been employed by the same government contractor since October 2000. 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," [\(34\)](#) 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. Despite Applicant's contentions that his financial difficulties commenced upon his retirement from active duty in July 2000, and was exacerbated by his three month period of unemployment, it is clear that he was in some degree of financial difficulty even before he retired. Furthermore, while Applicant may have been unemployed during the three month period between July and October 2000, because he was drawing his military retirement pay, it was not as if he was without any income.

While Applicant may have prioritized his bills and made only necessary payments for such items as the mortgage, utilities, and child support, many of the accounts became overdue and were not apparently attended to for quite some time, even after he returned to full employment. Among the unpaid accounts were the four which are the subject of security clearance review scrutiny. Applicant did address one account relatively early (the account identified in subparagraph 1.d. of the SOR). However, despite being advised of the particular overdue accounts during his interview with the Defense Security Service in April 2002, and his promise to make payment arrangements on the accounts, he

took no such actions for nearly one year. His overall financial situation, initial actions in avoiding payments, 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*).

Finally, around the same time as he received Interrogatories from DOHA, Applicant was motivated to inquire about payment arrangements and, commencing that same month, began making payments to three of the creditors and settled the account with the fourth creditor. His recent efforts fall within Financial Considerations Mitigating Condition (FC MC) E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). In addition, while I discount the severity of the impact of Applicant's brief period of unemployment, or even his later divorce, there may some benefit derived from acknowledging that those situations, in some small degree, might also fall within 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)*). Under these circumstances, I now find substantial evidence of positive action on his part to pay off his outstanding debts, as well as a new resolve to avoid future financial problems. I believe Applicant has, through evidence of extenuation and explanation, successfully mitigated or overcome the Government's case. Accordingly, allegations 1.a. through 1.d. 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

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. Clearance is granted.

Robert Robinson Gales

Chief Administrative Judge

1. The Government submitted six items in support of its contentions.
2. Item 4 (Security Clearance Application, dated April 1, 2002), at 4.
3. Item 5 (Statement of Subject, dated April 8, 2002), at 4.

4. *Id.*

5. *Id.*

6. Item 6 (Equifax Credit Report, dated May 31, 2003, attached to Answers to Financial Interrogatories, dated June 3,

2003).

7. *Id.*, at 3.

8. *Id.*

9. *Id.*

10. Item 5, *supra* note 3, at 5.

11. *Id.*, at 4.

12. Item 6 (Letter from creditor, dated May 14, 2003, attached to Answers to Financial Interrogatories), *supra* note 6.

13. *Id.*

14. Item 2 (Response to SOR, dated September 2, 2003), at 1.

15. *Id.*, at 4.

16. *Id.*

17. *Id.*

18. Item 6 (Answers to Financial Interrogatories), *supra* note 6, at 4.

19. *Id.*

20. *Id.*, Equifax Credit Report, at 4.

21. *Id.*, at 7.

22. *Id.*

23. *Id.*

24. Item 5, *supra* note 3, at 5.

25. *Id.*, at 4.

26. Item 6 (Letter from creditor, dated May 8, 2003, attached to Answers to Financial Interrogatories), *supra* note 6.

27. *Id.*

28. Item 2 (Response to SOR, dated September 2, 2003), at 1.

29. Item 6 (Equifax Credit Report), *supra* note 6, at 3.

30. Item 5, *supra* note 3, at 4.

31. Item 6 (Letter from creditor, dated May 20, 2003, attached to Answers to Financial Interrogatories), *supra* note 6.

32. *Id.* (Equifax Credit Report), *supra* note 6, at 3.

33. *Id.* (Personal Financial Statement, dated May 27, 2003, attached to Answers to Financial Interrogatories), *supra* note 6, at 1.

34. 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.)