

DATE: January 27, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-19514

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT ROBINSON GALES**

**APPEARANCES**

**FOR GOVERNMENT**

Erin C. Hogan, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Thirty-year-old Applicant's finances deteriorated rapidly when she was unable to repay her student loans and her creditor demanded monthly payments of \$300.00 and refused to accept her proffered \$200.00 payments. With her student loans in default and sold to a collection agency, she permitted her apartment lease to expire and moved in with her family to enable her to enter into payment arrangements with the collection agency. Her monthly payments commenced before the SOR was issued. With increased financial maturity and new resolve, Applicant has chosen to work with her two creditors to pay off her debts. Questions and doubts as to her security eligibility and suitability have been satisfied. Clearance is granted.

**STATEMENT OF THE CASE**

On July 30, 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, dated August 25, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have her case decided on the written record, in lieu of a hearing. Department Counsel submitted the Government's written case on October 15, 2003. A complete copy of the file of relevant material (FORM) [\(1\)](#) was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She took advantage of that opportunity and timely submitted her response on November 20, 2003. Department Counsel did not object to her submission. The case was assigned to me on January 26, 2004.

## FINDINGS OF FACT

Applicant has admitted one of the factual allegations pertaining to financial considerations under Guideline F (subparagraph 1.b.). Those admissions are incorporated herein as findings of fact. He denied the remaining allegation (subparagraph 1.a.).

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 30-year-old employee of a defense contractor seeking to retain a SECRET security clearance which was granted to her in November 1997.

It is unclear as to when Applicant's financial situation deteriorated to the point where she fell behind in her payments to various creditors. Commencing in about 1991, she obtained student loans while attending college.<sup>(2)</sup> The first two student loans, in the amounts of \$14,811.00 and \$1,312.00, respectively, were opened in August 1991.<sup>(3)</sup> A third loan, in the amount \$1,312.00, was opened in December 1991.<sup>(4)</sup> A fourth loan, in an identical amount, was opened in November 1992.<sup>(5)</sup> A fifth loan, in an unknown amount was apparently opened in October 1993.<sup>(6)</sup> A sixth loan, in the amount of \$2,625.00, was opened in November 1994.<sup>(7)</sup> Applicant made payments as agreed for about one year until she moved into an apartment and found herself unable to keep up with her payments.<sup>(8)</sup>

Applicant attempted to work out repayment arrangements with the creditor but was unsuccessful. She offered to make monthly payments of \$200.00, but a demand was made for payments of \$300.00, and the offer was rejected.<sup>(9)</sup> For an unspecified period, her annual tax refunds were garnisheed to offset the balance owed.<sup>(10)</sup>

In late 1997, the unpaid balances were purchased from the creditor by a licensed collection agency.<sup>(11)</sup> The unpaid principal balance of the four remaining unpaid loans, as of April 15, 2003, was \$12,114.48.<sup>(12)</sup> The total balance, including principal, interest, and collection costs, was \$18,244.56.<sup>(13)</sup> Applicant entered into repayment negotiations with the collection agency in April 2003, before the issuance of the SOR, and she was extended an offer of rehabilitation under which she would make monthly payments of \$275.00 for 14 months.<sup>(14)</sup> Automatic payments in the amount of \$275.00 are deducted from her account each month.<sup>(15)</sup> In August 2003, including principal, interest, and 18.5 per cent collection costs, the total unpaid balance was \$17,514.99.<sup>(16)</sup>

Applicant had previously indicated that when her lease--with rather high monthly payments--expired, she intended to move in with her family to enable her to make arrangements to pay off her debts. Her other debt, about which there was some security concern, was for a revolving credit card which was opened in August 2000 and which accrued an unpaid balance of \$870.00. The account was previously charged off.<sup>(17)</sup> Although she had not yet commenced making payments towards the debt, she vowed to pay it off, and the increased availability of funds will facilitate her efforts.

Applicant's current employment position and commencement date with her current employer was not developed,<sup>(18)</sup> and the quality of her 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 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,"<sup>(19)</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, 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. Applicant's financial difficulties commenced while she was in college some time after 1991 when she moved into an apartment and found herself unable to keep up with her various payments. It is unclear what additional circumstances or conditions may have contributed to her financial difficulties, such as gambling, loss of employment, unexpected medical emergency, or domestic turbulence, for there is no mention or allegation of any such circumstances or conditions. She briefly attempted to enter into

arrangements to repay her creditors but was unable to do so and ceased any further efforts for an unspecified period. Her subsequent inactivity and overall financial situation gave 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*).

In April 2003, several months before the SOR was issued, and expecting to reduce her living expenses by moving in with her family at the end of her apartment lease, Applicant renewed her efforts to resolve her debts. Her new efforts fall 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, I find substantial evidence of positive action on her part to resolve her outstanding student loan debts before this security clearance review process commenced, as well as a 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. and 1.b. 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

### **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.

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Robert Robinson Gales

Chief Administrative Judge

1. The Government submitted six items in support of its contentions.
2. Item 6 (Equifax Credit Report, dated May 8, 2003) attached as Atch B to Interrogatories, dated April 3, 2003)), at 3.
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*, at 2.
7. *Id.*, at 3.
8. Item 5 (Statement, dated April 9, 2002), at 2.
9. *Id.*
10. *Id.*
11. Item 6, *supra* note 2, at 1-2.
12. Item 6 (Letter from Collection Agency, dated April 15, 2003) attached to Interrogatories, dated April 3, 2003)).

13. *Id.*

14. *Id.*

15. Response to FORM, dated November 20, 2003.

16. Item 3 (Letter from Collection Agency, dated August 20, 2003, attached to Response to SOR, dated August 25, 2003), at 2.

17. Item 6, *supra* note 2, at 2.

18. It should be noted that Item 4 (Security Clearance Application, dated August 10, 2000) is incomplete and page 2 thereof was missing from the case file submitted.

19. 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.)