

DATE: October 15, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-21530

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 49-year-old truck driver with a six year history of outstanding financial indebtedness, in the approximate amount of \$50,500.00, caused primarily by her misplaced trust in a brother and sister-in-law to maintain her home and manage her finances under the authority of a power of attorney. The deceptive acts, theft, and fraud perpetrated by her sister-in-law in diverting Applicant's monies designated to pay various accounts, and using Applicant's credit cards without permission, cannot be attributed to Applicant. She has asserted a new attentiveness to her finances and no longer possesses credit cards. The questions and doubts as to her security eligibility and suitability have been satisfied. Clearance is granted.

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 statement, dated December 29, 2003, Applicant responded to the SOR allegations, and requested a hearing. The case was initially assigned to another administrative judge on May 21, 2004, but due to caseload considerations, was reassigned to me on August 3, 2004. A notice of hearing was issued on August 3, 2004, and I convened the hearing on August 19, 2004. During the hearing, one joint exhibit, three Government exhibits, and Applicant's testimony were received. The transcript (Tr.) was received on September 10, 2004.

FINDINGS OF FACT

Applicant has admitted, with an explanation, all of the factual allegations pertaining to financial matters under Guideline F (subparagraphs 1.a. through 1.i.). 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 49-year-old employee of a defense contractor seeking to retain the SECRET security clearance granted to her in December 1986.

Applicant has been a truck driver for a number of years, hauling freight, including munitions,⁽¹⁾ around the country. She is both too trusting and very gullible. Because she remains on the road for substantial periods--up to three or four months--at a time,⁽²⁾ and only returns briefly to her home, Applicant enlisted the assistance of others to maintain her home, manage her finances, and care for her dying mother.⁽³⁾ Her husband's sister-in-law and her husband moved into Applicant's residence in 1993⁽⁴⁾ and Applicant's brother moved there in 1994.⁽⁵⁾ Applicant furnished her sister-in-law a power of attorney to pay her bills in 1993-94, with an expiration date in 2001.⁽⁶⁾ The sister-in-law and her husband divorced, and she and Applicant's brother commenced a personal relationship.

Applicant and her husband/driving partner supported themselves while on the road by using an account from which they could each draw up to \$350.00 per week.⁽⁷⁾ The remainder of her salary was sent to Applicant's checking account from which her sister-in-law was to pay Applicant's bills.⁽⁸⁾ At one time, Applicant had about 10 credit cards, but usually left them in the possession of her sister-in-law when she was on the road.⁽⁹⁾ It was her expectation that her sister-in-law would pay the monthly \$200.00 house payment⁽¹⁰⁾ and reduce the balances on the credit cards to pay them off and eventually cancel the cards.⁽¹¹⁾ Instead, her sister-in-law paid her own bills using Applicant's money⁽¹²⁾ and used Applicant's credit cards, without Applicant's expressed permission,⁽¹³⁾ for her own benefit without making payments.⁽¹⁴⁾

Upon arriving home after an extended period away, Applicant would routinely ask her sister-in-law for the status of her finances and, although her sister-in-law promised to furnish account statements, she never did.⁽¹⁵⁾ In 1997, when she pressed her sister-in-law for an accounting and requested that she leave her home, her brother picked her up bodily and escorted her out the door of her own residence.⁽¹⁶⁾ In 1998, although they remained driving partners, Applicant and her husband were divorced.⁽¹⁷⁾ At about the same time, Applicant became more concerned about her finances and her relationship with her sister-in-law and started diverting some of her check to a savings account.⁽¹⁸⁾ Her sister-in-law found out about the savings account and attempted to withdraw the funds from it but was refused by the bank.⁽¹⁹⁾ Shortly thereafter, her sister-in-law handed Applicant all of her unpaid bills and advised her, for the first time, that money was needed for the house payment and the other bills.⁽²⁰⁾ When Applicant went to the bank to inquire as to the status of her checking account--the account into which her salary was sent for the payment of bills--Applicant learned that the account had been cleaned out by her sister-in-law.⁽²¹⁾

Applicant's brother and her sister-in-law moved out of her house in 1999-2000,⁽²²⁾ and the sister-in-law returned the power of attorney to her explaining she had gotten all the use out of it she could.⁽²³⁾ Applicant borrowed money from her ex-husband to revoke the power of attorney and explored other possible actions against her sister-in-law, but no further actions were taken because Applicant did not have sufficient funds. She made inquiries of her known creditors as to each outstanding account and later tried to consolidate her debts with a debt management company.⁽²⁴⁾ Unfortunately, she was surprised to learn that rather than declining, the balances had doubled in a year's time.⁽²⁵⁾ As of June 2003, Applicant owed 12 creditors (SOR ¶¶ 1.a. through 1.i.) over \$50,500.00.

Applicant explored the feasibility of a Chapter 13 bankruptcy but rejected that option because of the magnitude of her outstanding balances owed and the lack of available funds caused by the actions of her sister-in-law.⁽²⁶⁾ In July 2003, she filed for bankruptcy under Chapter 7,⁽²⁷⁾ and most of her debts were discharged on November 21, 2003⁽²⁸⁾--one month before she received the SOR.⁽²⁹⁾ One debt (SOR ¶ 1.c.), in the amount of \$147.00, was paid by Applicant

December 23, 2003. (30)

At about the same time her debts were discharged, Applicant's stepdaughter undertook the responsibility to manage Applicant's finances. (31) She does not have a power of attorney. (32) Applicant no longer maintains any credit cards, but does have one open joint checking account with her ex-husband and his daughter, her stepdaughter. (33) Applicant and her stepdaughter reside in Applicant's home, and her ex-husband/current driving partner resides in a trailer on the property. (34) In addition to the residence and trailer, Applicant owns another house in which one of her sisters resides. (35) Having learned from her previous experience, Applicant now checks her bills and statements every month. (36) She earns about \$3,000.00 to \$4,000.00 each month, (37) and is current on all her bills.

Applicant has leased her tractor from the same individual and has been employed by the same government contractor since 1992. (38) The quality of her performance was not developed.

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," (39) 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, Applicant appeared to owe a variety of creditors varying amounts on a number of overdue financial obligations which had either been paid off, characterized as bad debts, or sent for collection. That conduct, without more, 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 position as a truck driver on the road for substantial periods--up to three or four months--at a time, caused her to rely on a trusted sister-in-law and brother to maintain her home, manage her finances, and care for her dying mother. Unfortunately, her trust was misplaced and she became a victim of fraud, theft, and deception by those in whom she had misplaced her trust. Despite routinely sending substantial amounts of money to her sister-in-law to pay her bills, and making periodic efforts to obtain information regarding her finances, Applicant was unable to obtain the requested information. She finally learned of the deceptions and thefts perpetrated by her sister-in-law and her own brother, and eventually diverted her money to a different account and tried to revoke the power of attorney she had previously granted to her sister-in-law. The fact that the entire episode took approximately six years to uncover and terminate is unfortunate, and while it may be indicative of a failure of Applicant to take more assertive control over her own finances, it also reveals a person who is perhaps too trusting.

Her sister-in-law's deceptive and fraudulent actions may justify bringing this matter within Financial Considerations Mitigating Condition (FC MC) E2.A6.1.3.4. (*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)*). Applicable Adjudicative Process factors are: (2) *the circumstances surrounding the conduct, to include knowledgeable participation*; and (5) *the voluntariness of participation*.

Applicant's initial efforts to consolidate her debts, and her exploration of the feasibility of a bankruptcy under Chapter 13, though eventually abandoned in favor of bankruptcy under Chapter 7, are viewed as positive actions because they were undertaken before the issuance of the SOR. Likewise, she was motivated her to take efforts to avoid similar trouble in the future by changing her financial practices. Applicant's previous and continuing efforts to resolve all past outstanding financial obligations, as well as current obligations, bring this matter within FC MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Under these circumstances, Applicant has, through evidence of extenuation and explanation, successfully mitigated or overcome the government's case. Accordingly, allegations 1.a. through 1.l. 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

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: For the Applicant

Subparagraph 1.k.: For the Applicant

Subparagraph 1.l.: 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.

Robert Robinson Gales

Chief Administrative Judge

1. Tr., at 49.

2. Tr., at 19.

3. Tr., at 18, 20-22.

4. Tr., at 21.

5. Tr., at 21.

6. Tr., at 22-23.

7. Tr., at 31-32.

8. Government Exhibit 2 (Statement, dated April 1, 2002), at 2; Tr., at 20.

9. Tr., at 25

10. Tr., at 23.

11. Tr., at 25.

12. Tr., at 23.

13. Government Exhibit 2, *supra* note 8, at 2.

14. Tr., at 26.

15. Tr., at 27.

16. Tr., at 30.

17. Tr., at 29.

18. Tr., at 27.

19. Tr., at 27.

20. Tr., at 28.

21. Tr., at 28-29.

22. Tr., at 28, 33.

23. Tr., at 33.

24. Tr., at 38.

25. Tr., at 38.

26. Tr., at 38.

27. Tr., at 38.

28. Joint Exhibit I (Discharge of Debtor, dated November 21, 2003); Tr., at 38-39.

29. Applicant received the SOR December 23, 2003. Receipt attached to DOHA transmittal letter, dated November 17, 2003).

30. Response to SOR, dated December 29, 2003).

31. Tr., at 39.

32. Tr., at 40.

33. Tr., at 40.

34. Tr., at 51.

35. Tr., at 42.

36. Tr., at 40.

37. Tr., at 41.

38. Tr., at 46-48.

39. See 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" (see 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" (see Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (see Enclosure 2, Sec. E2.2.2.)

