

KEYWORD: Financial

DIGEST: Twenty-eight-year-old Applicant with a history of financial delinquencies caused by his initial irresponsibility and failure to realize the importance of maintaining good credit, chose to ignore his creditors and took no action to resolve his overdue financial obligations. During the hearing, he provided an elaborate proposal to pay off his delinquencies in the future. The involuntary satisfaction of some delinquencies through garnishment or attached income tax refunds does not constitute a good-faith effort by Applicant. His inaction, to date, raises grave questions and doubts about his security eligibility and suitability. Clearance is denied.

CASENO: 03-20638.h1

DATE: 01/27/2005

DATE: January 27, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-20638

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT ROBINSON GALES**

**APPEARANCES**

## **FOR GOVERNMENT**

Marc E. Curry, Esquire, Department Counsel

## **FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

Twenty-eight-year-old Applicant with a history of financial delinquencies caused by his initial irresponsibility and failure to realize the importance of maintaining good credit, chose to ignore his creditors and took no action to resolve his overdue financial obligations. During the hearing, he provided an elaborate proposal to pay off his delinquencies in the future. The involuntary satisfaction of some delinquencies through garnishment or attached income tax refunds does not constitute a good-faith effort by Applicant. His inaction, to date, raises grave questions and doubts about his security eligibility and suitability. Clearance is denied.

## **STATEMENT OF THE CASE**

On June 30, 2004, 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 July 21, 2004, Applicant responded to the allegations in the SOR and requested a hearing. The case was assigned to me on October 15, 2004. A notice of hearing was issued that same day, and I convened the hearing on November 16, 2004. During the hearing, one joint exhibit, three government exhibits, and seven Applicant exhibits, and Applicant's testimony, were received. The transcript (Tr.) was received on November 24, 2004.

## **RULINGS ON PROCEDURE**

At the end of the hearing, Department Counsel conceded that subparagraphs 1.n. and 1.p. of the SOR had been mitigated by Applicant and recommended a favorable finding as to those allegations.

## **FINDINGS OF FACT**

Applicant has admitted all of the factual allegations pertaining to financial matters under Guideline F (subparagraphs 1.a. through 1.t.). 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 28-year-old employee of a defense contractor. He is seeking to obtain a security clearance, the level of which has not been divulged.

At some point prior to the issuance of the SOR, Applicant had 35 delinquent debts in a variety of forms (charged off, placed for collection, or reduced to judgments). He attributed his adverse credit to "irresponsibility as a young adult" and being a "young, dumb kid"<sup>(1)</sup> who failed to realize the importance of maintaining good credit.<sup>(2)</sup> He paid no attention to his debts. However, as the security clearance investigation became more apparent to Applicant, in January 2003, he planned on refinancing of his residence to generate the funds necessary to finally pay off his delinquent financial obligations.<sup>(3)</sup> Those intentions were dashed when he was unable to do so because of insufficient equity in his house.<sup>(4)</sup> Although Applicant professed every intention of eventually paying off his creditors,<sup>(5)</sup> and was opposed to bankruptcy,<sup>(6)</sup> he made no voluntary efforts to resolve any of his delinquent accounts. Those accounts which were addressed were generally done through involuntary garnishment or attached income tax refunds.

When shown a copy of his credit report and interviewed by a Special Agent of the Defense Security Service (DSS) in January 2003, Applicant acknowledged the 30 debts reflected in his credit report, and indicated two of those debts had

already been paid off. <sup>(7)</sup> He agreed with the remaining 28 debts. <sup>(8)</sup> In his monthly financial statement furnished to DSS, Applicant identified seven debts and referred to them as current. <sup>(9)</sup> After paying his normal monthly expenses and making the monthly scheduled minimum payments on those seven debts, Applicant had a net remainder of \$26.00 available for discretionary spending. <sup>(10)</sup> In about February 2003, that figure was anticipated to increase to \$326.00. <sup>(11)</sup>

In February 2004, in response to financial interrogatories furnished by DOHA, Applicant indicated he had experienced increased expenses because his brother-in-law had moved in with him. <sup>(12)</sup> After paying his normal monthly expenses and making the monthly scheduled minimum payments on four identified debts, his Personal Financial Statement reflected a net remainder of \$18.00 available for discretionary spending. <sup>(13)</sup> He acknowledged money was extremely tight and he was in the process of searching for a part-time job. <sup>(14)</sup> A revised Personal Financial Statement submitted by Applicant during the hearing reflects a net remainder of \$220.00 available for discretionary spending. <sup>(15)</sup>

As noted above, the SOR identifies 35 delinquent accounts totaling nearly \$23,000.00. Those accounts, and their current status, are described below:

SOR #	DATE OPENED	TYPE DEBT	AMOUNT	CURRENT STATUS
1.a.	Nov. 1999	judgment (bounced check)	\$334.00	unpaid <sup>(16)</sup>
1.b.	Apr. 2003	judgment (bounced checks)	\$279.00	unpaid <sup>(17)</sup>
1.c.	Nov. 1998 - Mar. 2001	9 collection accounts (bounced checks)	\$483.00	unpaid <sup>(18)</sup>
1.d.	Nov. 1999	2 collection accounts (medical bills)	\$1,995.00	unpaid <sup>(19)</sup>
1.e.	May 2000	2 collection accounts (hospital bills)	\$1,168.00	unpaid <sup>(20)</sup>
1.f.	Aug. 2000 - Oct. 2002	4 collection accounts (emergency services & animal hospital)	\$797.00	\$247.00 paid by wife/3 unpaid <sup>(21)</sup>
1.g.	Dec. 1998 - Mar. 2000	2 collection accounts	\$22.00	\$8.00 paid/\$14.00 unpaid <sup>(22)</sup>
1.h.	Dec 2002	collection account (bounced check at a restaurant)	\$81.00	unpaid <sup>(23)</sup>
1.i.	Mar. 2003	collection account (wife's medical bill)	\$535.00	wife <u>may</u> have paid bill <sup>(24)</sup>
1.j.	Feb. 2002	2 collection accounts (medical bills)	\$130.00	unpaid <sup>(25)</sup>
1.k.	Jan. 2003	collection account (credit union)	\$135.00	unpaid <sup>(26)</sup>
1.l.	Nov 2000	account charged off (credit union)	\$109.00	unpaid <sup>(27)</sup>
1.m.	Oct. 2000	collection account (pager)	\$49.00	unpaid <sup>(28)</sup>
1.n.	Aug. 1999	collection account (cell phone)	\$305.00	paid <sup>(29)</sup>
1.o.	Jul. 1999	account charged off (repossession deficiency)	\$4,400.00	unpaid <sup>(30)</sup>
1.p.	Mar. 1999	collection account (student loans)	\$6,261.00	paid from tax refunds <sup>(31)</sup>
1.q.	Mar. 2001 - Nov.	2 collection accounts (hospital bills)	\$1,818.00	unpaid <sup>(32)</sup>

	2002			
l.r.	Feb 2000	account charged off	\$406.00	unpaid (33)
l.s.	May 2001	judgment (townhouse)	\$3,462.42	\$259.14
				garnished every 2 weeks (34)

Applicant was married to his first wife from 1995 until 1997. He married his current wife in September 2001. They currently have an average combined net monthly income of \$3,924.00, (35) and total average monthly expenses of \$3,704.00, (36) leaving \$220.00 for discretionary spending. (37) Included in the expense figure is a monthly car payment of \$258.00 on a 2001 Pontiac Grand Am. Applicant prepared a proposed debt payment plan which he submitted during the hearing. (38) He proposed to start making payments to some of the creditors, in sequence, on October 14, 2004, but had no plans or proposals to satisfy other listed delinquencies.

Applicant has been employed as a telephone maintenance technician by a government contractor since July 2002. According to his supervisors, he is dependable, reliable, conscientious, innovative, dedicated, very responsible, and mature. One of his program managers claimed Applicant "is working hard at paying off all his debts and is making substantial progress in that area." (39)

## **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," [\(40\)](#) 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, because of Applicant's initial irresponsibility and failure to realize the importance of maintaining good credit, he paid no attention to his debts and merely ignored them. Accounts became delinquent and were closed by creditors, charged off, or sent to collection. He chose to ignore his creditors and took no action to resolve his overdue financial obligations. In January 2003, upon being questioned about his finances by DSS, Applicant acknowledged the 30 debts reflected in his credit report, and indicated two of those debts had already been paid off. He then disputed every negative entry in the credit report even though those debts were valid. Some of the reported delinquencies were dropped from the report. Applicant indicated he would eventually pay off his debts, but despite promises to do so in January 2003, February 2004, and again in July 2004, no voluntary efforts occurred. During the hearing, Applicant provided an elaborate proposal to pay off his delinquencies, but his actions were to start in the future. His failure to satisfy his outstanding financial obligations 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*). Moreover, Applicant's actions in writing bad checks raises FC DC E2.A6.1.2.2. (*deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust*).

Because of the absence of timely meaningful 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*). The involuntary satisfaction of some delinquencies through garnishment or income tax offset does not constitute a good-faith effort by Applicant. His vacillation over a substantial period of time as to how to resolve his financial dilemma, with no action being taken, simply indicates promises made but not kept.

Absent financial counseling, or something to motivate him to alter his fiscal irresponsibility, the most recent promises appear to be more cosmetic than meaningful and long-lasting. Under these circumstances, 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. Accordingly, allegations 1.a. through 1.m., 1.o., and 1.p. through 1.t., of the SOR are concluded against Applicant. Because Department Counsel indicated the government was satisfied Applicant had mitigated remaining the allegations, subparagraphs 1.n. and 1.p. of the SOR are concluded for 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

Subparagraph 1.k.: Against the Applicant

Subparagraph 1.l.: Against the Applicant

Subparagraph 1.m.: Against the Applicant

Subparagraph 1.n.: For the Applicant

Subparagraph 1.o.: Against the Applicant

Subparagraph 1.p.: For the Applicant

Subparagraph 1.q.: Against the Applicant

Subparagraph 1.r.: Against the Applicant

Subparagraph 1.s.: Against the Applicant

Subparagraph 1.t.: 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. Tr., at 69.
2. Government Exhibit 2 (Statement, dated January 21, 2003), at 5.
3. *Id.*
4. Tr., at 64.
5. Government Exhibit 2, *supra* note 2, at 5.
6. Tr., at 70.
7. Government Exhibit 2, *supra* note 2, at 4.
8. *Id.*
9. *Id.*, at 6.
10. *Id.*, at 5.
11. *Id.*
12. Government Exhibit 3 (Financial Interrogatory, dated February 10, 2004), at 5.
13. *Id.*
14. *Id.*, at 6.
15. Applicant Exhibit A (Personal Financial Statement, undated), at 2.

16. Tr., at 19.

17. Tr., at 23.

18. Tr., at 32.

19. Tr., at 34-36.

20. Tr., at 38.

21. Tr., at 40-41.

22. Tr., at 48-49.

23. Tr., at 50.

24. Tr., at 52.

25. Tr., at 53-54.

26. Tr., at 54.

27. Tr., at 55.

28. Tr., at 56.

29. Tr., at 75.

30. Tr., at 59.

31. Tr., at 59-60.

32. Tr., at 60-61.

33. Tr., at 62.

34. Tr., at 63.

35. Applicant Exhibit A, *supra* note 15, at 1.

36. *Id.*, at 1-2.

37. *Id.*, at 2.

38. *Id.*, at 3.

39. Applicant Exhibit F (Letter from Program Manager, dated September 23, 2004).

40. 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.)