

DATE: October 8, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-32202

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Forty-seven-year-old Applicant's finances deteriorated rapidly when her spouse failed to make mortgage payments, they divorced, and her place of employment relocated and she became unemployed-all of which strained her finances and ability to pay her bills. Applicant's initial Chapter 13 bankruptcy was converted to Chapter 7 and she was released from all dischargeable debts. Sometime thereafter, she again became overwhelmed by new financial delinquencies-the causes of which are unclear-and she filed a Chapter 7 bankruptcy which she rapidly converted to a Chapter 13 repayment plan. With increased financial maturity and new resolve, Applicant has chosen to work with her 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 April 18, 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 which 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 May 12, 2003, but notarized May 19, 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 July 25, 2003. A complete copy of the file of relevant material (FORM) [\(U\)](#) was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She apparently chose not to do so. The case was assigned to another Administrative Judge on September 26, 2003, but, due to caseload considerations, was subsequently reassigned to, and received by, this Administrative Judge on October 6, 2003.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to financial considerations under Guideline F (subparagraphs 1.a. through 1.d.). Those admissions are incorporated herein as findings of fact.

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 47-year-old employee of a defense contractor seeking to retain a SECRET security clearance which was granted to her in August 2000.

Applicant's financial situation until about 1991-92 was unremarkable and basically stable. She had married in January 1990 but separated in August 1992.⁽²⁾ They were divorced in March 1993.⁽³⁾ During the period of their separation, Applicant's spouse remained in the marital residence, but unbeknownst to her, he repeatedly failed to show up for work and did not pay any of the bills, including the 1st and 2nd mortgages.⁽⁴⁾ Applicant's financial situation rapidly deteriorated when, at the divorce, her spouse executed a quit claim deed turning the house over to her. Shortly thereafter, the mortgage-holder came to Applicant seeking payment of all back rent and fees.⁽⁵⁾ She was unable to pay off the outstanding balances and sought the assistance of an attorney who advised her to seek the protection of bankruptcy.

In December 1994, Applicant filed a voluntary petition under Chapter 13 of the Bankruptcy Code.⁽⁶⁾ At the time of the filing, Applicant listed total liabilities in the amount of \$38,719.00,⁽⁷⁾ consisting of \$31,936.00 for the 1st and 2nd mortgages and the balance on an automobile loan.⁽⁸⁾ The remaining \$6,783.00 in liabilities was to creditors holding unsecured nonpriority claims.⁽⁹⁾ Of the 35 claims listed, 12 were for medical-related charges.⁽¹⁰⁾ With her total projected monthly income of \$1,241.20, and total projected monthly expenses of \$775.20, it was anticipated Applicant would pay into the Chapter 13 repayment plan the bi-weekly amount of \$215.08.⁽¹¹⁾ Applicant had a strong feeling of responsibility and intended to pay off all of her debts under the Chapter 13 bankruptcy.⁽¹²⁾

The sequence of events becomes somewhat confusing thereafter. In January 1995, the Trustee moved to dismiss the bankruptcy for Applicant's failure to commence making payments, and declared a hearing on the motion would be held in February 1995.⁽¹³⁾ Nevertheless, in February 1995, Applicant was ordered to pay the plan \$466.00 per month for a total of 60 months.⁽¹⁴⁾ No mention of the dismissal is found in the Order.

After filing the Chapter 13 bankruptcy, Applicant was informed by her employer that all employees at the facility where she worked would be relocated to a facility in another city within the same state, and if they wished to keep their jobs they would have to move.⁽¹⁵⁾ The estimated distance between the Applicant's residence and her new work location is about 88 miles. Applicant made several trips to the new location to look for a place to live, but soon realized relocation was financially impossible.⁽¹⁶⁾ In the Spring of 1995, Applicant again sought the assistance of her attorney and was advised to convert her bankruptcy from Chapter 13 to Chapter 7.⁽¹⁷⁾ Of the \$630.08 paid by Applicant under the Chapter 13 bankruptcy plan, \$60.00 in claims was paid, and \$570.08 were diverted for administrative fees.⁽¹⁸⁾

In April 1995, Applicant's Chapter 13 bankruptcy was converted to a Chapter 7 bankruptcy.⁽¹⁹⁾ At the time of the conversion, Applicant listed total liabilities in the amount of \$27,297.83,⁽²⁰⁾ consisting of \$18,861.00 for the 1st and 2nd mortgages⁽²¹⁾ and the remaining \$8,436.83 in liabilities was to creditors holding unsecured nonpriority claims.⁽²²⁾ In August 1995, Applicant was released from all dischargeable debts.⁽²³⁾ The discharge apparently did not save her house from foreclosure, and in September 1995, Applicant and her two children moved in with Applicant's parents. When her position relocated in September 1996, Applicant remained behind and became unemployed.⁽²⁴⁾ She finally secured a new position in about May 1997.⁽²⁵⁾

In December 1997, Applicant moved into her own home, and after renting it for about one year, purchased the property.

By September 2000, Applicant had again become financially overextended.⁽²⁶⁾

In May 2001, Applicant, feeling "very overwhelmed," filed a voluntary petition under Chapter 7 of the Bankruptcy Code.⁽²⁷⁾ At the time of the filing, Applicant listed total liabilities in the amount of \$82,269.00,⁽²⁸⁾ consisting of \$77,671.00 for the mortgage and the balance on an automobile loan.⁽²⁹⁾ The remaining \$4,598.00 in liabilities was to creditors holding unsecured nonpriority claims.⁽³⁰⁾ There were only eight unsecured claims listed. At the time of the filing, Applicant's family tried to persuade her of the finality of her actions, and shortly thereafter, she decided to take affirmative actions to retain her home. In July 2001, Applicant's Chapter 7 bankruptcy was converted to a Chapter 13 bankruptcy.⁽³¹⁾ Under the approved Chapter 13 repayment plan, Applicant was to pay the Trustee \$950.00 per month for 60 months.⁽³²⁾ She makes two \$438.46 payments per month by payroll deduction.⁽³³⁾

Applicant was indebted to the state of her residence in the approximate amount of \$366.00 related to a tax lien imposed against her in January 2001. It appears the lien was filed in favor of a school district based on a tax purportedly owed the state because of confusion over Applicant's legal residence based on 1992 tax records. As her residence was not within the school district in question, she was required to furnish a copy of her W-2 for the year in question to resolve the lien.⁽³⁴⁾ That lien was released and satisfied effective February 23, 2003--well before the issuance of the SOR in April 2003.⁽³⁵⁾ A payment in the amount of \$18.00 was made to the court on March 4, 2003.⁽³⁶⁾

Applicant is indebted to a company (more fully identified in subparagraph 1.d. of the SOR) for services performed for and incurred by, her daughter in the amount of \$59.00. The debt was forwarded for collection in January 2000.⁽³⁷⁾ Applicant was made aware of the debt during her interview with the Defense Security Service (DSS) in June 2002, and she was surprised her daughter hadn't already resolved the debt.⁽³⁸⁾ Applicant promised to have it taken care of.⁽³⁹⁾ As of May 12, 2003--nearly one year later--she had not yet done so, and contended it was an oversight.⁽⁴⁰⁾

In May 2003, Applicant stated:

. . . I wished that I had done things differently, I realize that I can't change things now but the only thing I can do now is make sure that I do not make the same mistake three times. I am in the process of looking into trying to get out of my bankruptcy earlier than planned and I found out that I have at least two options one is either refinancing my home with the equity in it to pay off my arrears or wait until I get married to refinance (which I am going to be getting married in a couple of months) so right now I am waiting to hear back from my mortgage company.⁽⁴¹⁾

There is no evidence to indicate Applicant has generate any further financial delinquencies since she commenced making payments under her Chapter 13 repayment plan.

Applicant has been employed as an administrative assistant with a government contractor since July 1998. 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," ⁽⁴²⁾ 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 in about 1991-92 through a combination of circumstances including her spouse's failure to pay the mortgages and other bills, and exacerbated by their eventual divorce. A single parent with two children, she attempted to balance the responsibilities of parenthood and career. Her efforts were briefly successful, but she sustained a substantial setback when her employer relocated her place of employment and she was forced to decide between increased expenses with employment or decreased expenses with unemployment. At times, Applicant felt overwhelmed by her financial circumstances, and was close to surrendering to them before realizing her responsibilities. That conduct 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*).

Applicant initially tried to handle her bills under Chapter 13, but when the totality of her indebtedness became fully realized, it was acknowledged that further repayment efforts would be fruitless, and with the assistance of an attorney, she converted the Chapter 13 to a Chapter 7. In August 1995, she was released from all dischargeable debts.

Had the story ended satisfactorily at that point, it is unlikely that an SOR would have been written. However, by September 2000, she again became financially overextended-without explanation as to the causes of the situation. In May 2001, she filed a voluntary petition under Chapter 7, but quickly converted it to Chapter 13. Applicant's continuing efforts to resolve and repay her delinquent debts are viewed favorably. With increased financial maturity and new resolve, Applicant has chosen to work with her creditors to pay off her debts. Under her current repayment plan, she makes two payments per month of \$438.46 by payroll deduction. In addition, the tax lien was resolved well before the issuance of the SOR, and, despite being overlooked, the remaining \$59.00 debt will be taken care of.

The combination of those individual events, falls within Financial Considerations Mitigating Condition (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)*), and 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 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. 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.

Robert Robinson Gales

Chief Administrative Judge

1. The Government submitted 12 items in support of its contentions.
2. Item 6 (Statement of Subject, dated June 20, 2002), at 1.
3. *Id.*
4. *Id.*, at 1-2; Item 7 (Statement, dated March 29, 2000), at 1.
5. *Id.*, Item 7.
6. Item 9 (Voluntary Petition, dated December 9, 1994).

7. *Id.* (Voluntary Petition - Summary of Schedules).
8. *Id.* (Voluntary Petition - Schedule D - Creditors Holding Secured Claims).
9. *Id.*, *supra* note 7.
10. *Id.* (Voluntary Petition - Schedule F - Creditors Holding Unsecured Nonpriority Claims), at 1-7.
11. *Id.* (Voluntary Petition - Schedule J - Current Expenditures of Individual Debtor(s)).
12. Item 6, *supra* note 2, at 2.
13. Item 9 (Motion to Dismiss and Notice of Hearing, dated January 18, 1995).
14. Item 9 (Order Confirming Chapter 13 Plan, dated February 21, 1995)
15. Item 6, *supra* note 2, at 2.
16. *Id.*
17. *Id.*
18. Item 9 (Trustee's Final Report and Account, dated April 25, 1995), at 1.
19. *Id.*
20. Item 10 (Notice of Conversion from Chapter 13 to Chapter 7 - Summary of Schedules).
21. *Id.* (Notice of Conversion from Chapter 13 to Chapter 7 - Schedule D - Creditors Holding Secured Claims).
22. *Id.* (Schedule F - Creditors Holding Unsecured Nonpriority Claims), at 1-7.
23. *Id.* (Discharge of Debtor, dated August 8, 1995).
24. Item 6, *supra* note 2, at 2.
25. *Id.*
26. *Id.*, at 3.
27. Item 11 (Voluntary Petition, dated May 5, 2001).
28. *Id.* (Voluntary Petition - Summary of Schedules).
29. *Id.* (Voluntary Petition - Schedule D - Creditors Holding Secured Claims).
30. *Id.* (Voluntary Petition - Schedule F - Creditors Holding Unsecured Nonpriority Claims), at 1-2.
31. Item 12 (Order Converting Chapter 7 Case to Chapter 13, undated)..
32. *Id.* (Order Confirming Chapter 13 Plan and Order Allowing Attorney Fee For Debtor' Counsel, dated October 23, 2001).
33. Item 6, *supra* note 2, at 3.
34. *Id.*, at 4.

35. Release and Satisfaction of Judgment, dated February 23, 2003, attached to Applicant's Response to SOR, dated May 12, 2003.

36. Receipt, dated March 4, 2003, attached to Applicant's Response to SOR, dated May 12, 2003.

37. Item 8 (Report of Credit, dated April 17, 2002), at 6.

38. Item 6, *supra* note 2, at 4.

39. *Id.*

40. Item 4, *supra* note 35.

41. *Id.*, at 3.

42. *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.)