

DATE: January 30, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-02235

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Fifty-two-year-old Applicant's finances deteriorated rapidly when her employment hours and salary were drastically reduced and she undertook responsibility for her mother-in-law's finances. She was unable to remain current on her various accounts and many of them were charged off as bad debts. In an effort to resolve those accounts, Applicant took out a mortgage on her residence and was able to resolve all but four of the accounts. Despite her promise to make repayment arrangements for those four accounts, Applicant did nothing until motivated to do so nearly a year later when she received the SOR. To her eventual credit, she has now paid off three of the accounts and is making regular payments on the fourth account. Questions and doubts as to her security eligibility and suitability have been satisfied. Clearance is granted.

STATEMENT OF THE CASE

On September 8, 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 27, 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 November 25, 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 responses on November 19, 2003, and December 20, 2003. Department Counsel did not object to her submissions. The case was assigned to me on

January 28, 2004.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to financial considerations under Guideline F (subparagraphs 1.a. through 1.c.). 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 52-year-old employee of a defense contractor seeking to obtain a security clearance the level of which has not been identified.

Applicant was employed as a bookkeeper for a doctor from 1982 until sometime prior to October 2002. At some unspecified point, presumed to be between 1996 and 2002, (2) Applicant's hours were reduced to 26 hours per week and her income plummeted. (3) As a result of her diminished wages, and the fact that she was also paying her mother-in-law's bills, she fell behind in her own bills. (4) In April 2001, Applicant and her husband took out a mortgage on their residence and paid off many of the overdue accounts. (5) Although she contended she furnished a copy of the settlement sheet reflecting which accounts had been paid off, (6) presumably to the investigating authorities, no such document appears in the case file or in evidence submitted to me.

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 September 2001. The balance eventually rose to \$484.00, and the account was charged off as a bad debt. (7) The most recent action reported in the Report of Credit occurred in March 2002. (8) In October 2002, Applicant indicated she was "making arrangements to pay" the account. (9) She took no such actions until nearly one year later when, on September 15, 2003, she wrote the creditor to inquire about payment arrangements. (10) This account was purchased by a collection agency who wrote Applicant in August 2003 and made a time-sensitive offer, to expire within 30 days, to settle the account, now totaling \$484.81, for \$339.37. (11) She accepted the offer apparently too late to take advantage of the offer, but nevertheless paid the collection agency \$484.81 on September 26, 2003. (12)

Applicant opened a second individual revolving credit card account with the same national bank in November 2001. The balance eventually rose to \$1,035.00, and the account was also charged off as a bad debt. (13) The most recent action reported in the Report of Credit occurred in March 2002. (14) In October 2002, Applicant indicated she was "making arrangements to pay" the account. (15) She took no such actions until nearly one year later when, on September 15, 2003, she wrote the creditor to inquire about payment arrangements. (16) This account was purchased by a collection agency who wrote Applicant and made a time-sensitive offer, to expire on October 17, 2003, to settle the account, now totaling \$1,035.84, for \$517.92. (17) She accepted the offer and paid the collection agency \$517.92 on September 26, 2003. (18)

Applicant opened an individual revolving credit card account with a national bank (more fully identified in subparagraph 1.b. of the SOR) in November 1987. The balance eventually rose to \$9,106.00, and the account was charged off as a bad debt. (19) The most recent action reported in the Report of Credit occurred in November 2001. (20) In October 2002, Applicant indicated she was "making arrangements to pay" the account. (21) She took no such actions until nearly one year later when, on September 26, 2003, she wrote the creditor to inquire about payment arrangements and made a payment consisting of \$150.00. (22) She made another payment, this time for \$100.00, on October 28, 2003. (23) This account was purchased by a collection agency who wrote Applicant in October 2003 and made a demand for the entire outstanding balance, claimed to be \$9,0006.45. (24) She disputed the amount claiming her previous payments had not been deducted from the outstanding balance, but nevertheless paid the collection agency another \$100.00 on

November 19, 2003, and again on December 20, 2003.⁽²⁵⁾ Applicant has vowed to continue making regular payments.⁽²⁶⁾

Applicant opened an individual revolving gasoline/credit card account with a national bank (more fully identified in subparagraph 1.c. of the SOR) in June 1996. The balance eventually rose to \$16.00, and the account was charged off as a bad debt and transferred to recovery.⁽²⁷⁾ The most recent action reported in the Report of Credit occurred in June 1996.⁽²⁸⁾ In October 2002, Applicant indicated she thought the account had been paid, but if it was determined that it was still unpaid, she would make arrangements to pay it.⁽²⁹⁾ She took no such actions until nearly one year later when, on September 26, 2003, she wrote the creditor to inquire about payment arrangements.⁽³⁰⁾ On October 1, 2003, the creditor responded with payment instructions,⁽³¹⁾ and that same day Applicant paid off the debt.⁽³²⁾

Applicant's current employment position and commencement date with her current employer was not developed, 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,"⁽³³⁾ 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 at some unspecified point, presumed to be between 1996 and 2002, when her hours were reduced to 26 hours per week and her income plummeted. At about the same time she undertook responsibility for her mother-in-law's finances. As a result of the combination of circumstances, she fell behind in her own bills. In April 2001, she and her husband took out a mortgage on their residence and paid off many of the overdue accounts, but, apparently some of them were not paid. Among the unpaid accounts were the four which are the subject of security clearance review scrutiny. Despite being advised of the particular overdue accounts during her interview with the Defense Security Service in October 2002, and her promise to make payment arrangements on the accounts, she took no such actions for nearly one year. Her overall financial situation, initial actions in avoiding payments, and her subsequent inactivity, 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*).

Finally, around the same time as she responded to the SOR, Applicant was motivated to inquire about payment arrangements and, commencing in September 2003, began making payments to one of the creditors and eventually paid off three other accounts. Her recent 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 now find substantial evidence of positive action on her part to resolve her outstanding debts, 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.c. 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

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 nine items in support of its contentions.
2. Item 8 (Equifax Report of Credit, dated October 21, 2002), at 5-7. A review of the Report indicates the most recent actions (as of the date of the report) on accounts identified as past due, charged off, or bad debts, occurred during the period 1996-2002.
3. Item 6 (Statement, dated October 23, 2002), at 1.
4. *Id.*
5. *Id.*, at 2.
6. *Id.*
7. Item 8, *supra* note 2, at 7.
8. *Id.*
9. Item 6, *supra* note 3, at 2.
10. Item 3 (Response to SOR, notarized September 27, 2003), at 1 and encl. 4 (letter to creditor, dated September 15, 2003).
11. *Id.*, at encl. 6 (letter from collection agency, dated August 7, 2003).
12. *Id.*, at encl. 6, atch. (Check, dated September 26, 2003).
13. Item 8, *supra* note 2, at 7.
14. *Id.*
15. Item 6, *supra* note 3, at 2.
16. Item 3, *supra* note 10, at 1 and encl. 4.
17. *Id.*, at encl. 5.
18. *Id.*, at encl. 5, atch. (check, dated September 26, 2003).
19. Item 8, *supra* note 2, at 7.
20. *Id.*
21. Item 6, *supra* note 3, at 2.
22. Item 3, *supra* note 10, at 1 and encl. 3 (letter to creditor, dated September 26, 2003, and check, dated September 26, 2003).
23. Response to FORM, dated November 19, 2003, at unnumbered encl. (letter to creditor, dated November 3, 2003).

24. *Id.*, at encl. 2 (letter from collection agency, dated August 7, 2003).
25. *Id.*, at encl. 1 (check, dated November 20, 2003) and unnumbered encl (check, dated December 20, 2003).
26. Item 3, *supra* note 10, at 1.
27. Item 8, *supra* note 2, at 7-8.
28. *Id.*, at 8.
29. Item 6, *supra* note 3, at 2.
30. Item 3, *supra* note 10, at 1 and encl. 2 (letter to creditor, dated September 26, 2003, and web message to creditor, undated).
31. Item 4, at 2 (e-mail message from creditor, dated October 1, 2003).
32. *Id.*, at 4 (check, dated October 1, 2003).
33. 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.)