

KEYWORD: Financial

DIGEST: Thirty-six-year-old Applicant has a lifestyle of extravagant spending, periodically interrupted by financial difficulties resulting in obligations being charged off, turned over to collection, and two bankruptcies. Despite having his debts discharged in 2001, and an increased combined monthly income, his financial situation continues to deteriorate and he again has accounts that are over the credit limit or past due, and his mortgage payments have been delinquent periodically. He is not currently making any payments towards his student loan, and owes \$11,000.00 to the Internal Revenue Service (IRS) for unpaid income taxes. Grave questions and doubts remain as to his security eligibility and suitability. Clearance is denied.

CASENO: 03-05145.h1

DATE: 09/16/2004

DATE: September 16, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-05145

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Thirty-six-year-old Applicant has a lifestyle of extravagant spending, periodically interrupted by financial difficulties resulting in obligations being charged off, turned over to collection, and two bankruptcies. Despite having his debts discharged in 2001, and an increased combined monthly income, his financial situation continues to deteriorate and he again has accounts that are over the credit limit or past due, and his mortgage payments have been delinquent periodically. He is not currently making any payments towards his student loan, and owes \$11,000.00 to the Internal Revenue Service (IRS) for unpaid income taxes. Grave questions and doubts remain as to his security eligibility and suitability. Clearance is denied.

STATEMENT OF THE CASE

On December 3, 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 January 15, 2004, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on June 7, 2004. A notice of hearing was issued on June 7, 2004, and the hearing was held before me on June 23, 2004. During the course of the hearing, six government exhibits, six Applicant exhibits, and the testimony of one Applicant witness (the Applicant) were received. The transcript (Tr.) was received on July 22, 2004.

FINDINGS OF FACT

Applicant has admitted both of the factual allegations pertaining to financial matters under Guideline F (subparagraphs 1.a. and 1.b.). 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 36-year-old employee of a defense contractor seeking to retain the SECRET security clearance previously granted to him.

Applicant has a lengthy history reflecting outstanding financial obligations that were either charged off, turned over to collection, paid off under a Chapter 13 bankruptcy, discharged under a Chapter 7 bankruptcy, or remain delinquent. During the early 1990s, Applicant was working overtime earning a good income and buying whatever he wanted.⁽¹⁾ Credit card companies were showering him with pre-approved credit cards that only served to encourage more spending.⁽²⁾ The extravagance came to an unexpected halt when the overtime income ceased and Applicant was confronted with an inability to make the required monthly payments.⁽³⁾ With no savings, and no way to make payments, in July 1994, Applicant resorted to Chapter 13 bankruptcy.⁽⁴⁾ At that time, Applicant had \$15,775.00 total assets compared to \$39,576.81 total liabilities.⁽⁵⁾ He eventually paid the Chapter 13 trustee \$12,327.40,⁽⁶⁾ of which \$8,184.21 was paid towards creditors' principal, and \$1,966.92 was paid towards interest.⁽⁷⁾ The case was completed and the bankruptcy was discharged in June 1998.⁽⁸⁾ It is unclear if Applicant paid off the entire balances due or entered into agreements with the creditors for reduced balances.

Unfortunately, the cycle returned. Applicant again started earning more overtime salary and again began spending as he had before. He married and suddenly was confronted with a house payment and utility bills as well as charges for gifts for his wife.⁽⁹⁾ The financial difficulties returned, and, once again, he was unable to make the required monthly payments. Despite his efforts to resolve his delinquent debts, he was unable to do so and, instead, turned once again to bankruptcy. This time, however, he decided to file under Chapter 7, and did so in April 2001.⁽¹⁰⁾ At that time, Applicant and his wife had \$143,764.00 total assets, including a house, compared to \$144,233.00 total liabilities, including a mortgage.⁽¹¹⁾ In June 2001, Applicant and his wife agreed to reaffirm their debt, in the amount of over \$18,000.00, for their automobile.⁽¹²⁾ Their remaining debts, primarily credit cards and college tuition, were discharged on August 15, 2001.⁽¹³⁾

When Applicant and his wife filed their voluntary petition under Chapter 7 their combined monthly income was \$3,456.00.⁽¹⁴⁾ Their average monthly expenses were \$2,684.00.⁽¹⁵⁾ In December 2002, Applicant's wife was no longer
⁽¹⁶⁾ ⁽¹⁷⁾

working, and his monthly net income was \$3,064.00. Their average monthly expenses dropped to \$1,747.00, and their monthly debts, covering three credit cards, a car payment, and cell phone charges, was \$626.00.⁽¹⁸⁾ Their available monthly funds for discretionary use was \$691.00.⁽¹⁹⁾ Following their Chapter 7 discharge, Applicant and his wife purchased a new automobile and refinanced their home.

The cycle has seemingly returned once again. Applicant currently has accounts that are over the credit limit or past due,⁽²⁰⁾ and while he has not been delinquent in his mortgage payments within the past six months, he has been delinquent periodically since his last bankruptcy.⁽²¹⁾ He is not currently making any payments towards his student loan, and it is unclear if it is in deferment or forbearance.⁽²²⁾ He owes \$11,000.00 to the IRS for unpaid income taxes for 2001-02, along with an unspecified amount for state income taxes,⁽²³⁾ and is presently making monthly payments of \$130.00 to the IRS and \$60.00 to the state.⁽²⁴⁾ He owns a 2003 Chevy Malibu,⁽²⁵⁾ which he financed for \$22,000.00,⁽²⁶⁾ for which he makes monthly payments of \$492.00.⁽²⁷⁾

In an effort to pay off his most recent debts, and aware that his security clearance was under scrutiny, in December 2003, he took a second job for which he receives approximately \$900.00 per month.⁽²⁸⁾ His wife also makes an additional \$800.00 per month babysitting.⁽²⁹⁾ He estimates their combined monthly income from his two jobs and her one job is about \$4,000.00.⁽³⁰⁾ Nevertheless, there is still insufficient funds to make all the necessary monthly payments on his current outstanding credit card debt of about \$3,200.00.⁽³¹⁾ Applicant has two goals in mind: 1) he wants to pay off the past due and over the limit credit cards by first paying off the lowest ones; and 2) he wants to pay all his debts off and cut up his credit cards.

Applicant has never received any type of consumer credit counseling.⁽³²⁾

Applicant is married and has two children.

Applicant has been employed as a manufacturing technician by the same government contractor, or its successor, since September 1993. Friends, coworkers, and supervisors support his application in glowing terms. He has been characterized as very respectful, hardworking, accountable, highly skilled, reliable, honest, trustworthy, and dedicated to his job and family.

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 guidelines 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," [\(33\)](#) 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 SOR allegation:

The government has established its case under Guideline F. Applicant's lifestyle of extravagant spending is periodically interrupted by financial difficulties resulting in obligations being charged off, turned over to collection, and bankruptcy. In July 1994, when he filed for bankruptcy under Chapter 13, his total liabilities were \$39,576.81. By June 1998, when the bankruptcy was discharged, his slate was clean. But not for long. Without the benefit of any type of consumer credit counseling, Applicant resumed his earlier spending habits and the financial difficulties returned. In April 2001, not quite three years later, when he again filed for bankruptcy, this time under Chapter 7, his total liabilities, including his mortgage, had ballooned to \$144,233.00. In August 2001, his remaining debts, primarily credit cards and college tuition, were discharged, and once again his slate was clean.

Despite claiming an understanding as to how his financial predicament arose, and declaring an intention not to allow it to occur again, the cycle has seemingly returned. Applicant again has accounts that are over the credit limit or past due, and his mortgage payments have been delinquent periodically since his last bankruptcy. He is not currently making any payments towards his student loan, and owes \$11,000.00 to the IRS for unpaid income taxes, along with an unspecified amount for state income taxes, for which he is presently making monthly payments. Symbolic of his lack of financial restraint is his 2003 Chevy alibu, which he financed for \$22,000.00, for which he makes monthly payments of \$492.00.

Upon receiving the SOR, and seemingly recognizing the seriousness of his impending financial predicament, Applicant took a second job and his wife has started to earn babysitting money. He estimates their combined monthly income is about \$4,000.00. But it is still insufficient to enable him to make all the necessary monthly payments and pay off other accounts. Thus, his conduct pertaining to his financial obligations falls within 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 financial situation and difficulties also bring this matter with Financial Considerations Mitigating Condition (FC MC) E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). However, the overall impact of that condition is minimized. He cooperated in the eventual payment of debts under Chapter 13 during 1994-98. He is currently making payments to the IRS and the state for delinquent income tax. And he has finally been motivated by receipt of the SOR to earn more money to address his new financial obligations and delinquencies. However, in the absence of any financial or consumer credit counseling, or something to motivate him to remain current in expenditures and alter his lifestyle of extravagance and fiscal irresponsibility, the very recent attempted resolution of Applicant's financial seemingly deteriorating financial condition seems to be more cosmetic than meaningful and long-lasting. Under these circumstances, I believe insufficient time has passed for me to conclude that Applicant has turned his financial life and lifestyle around sufficiently for me to be confident that his financial irresponsibility is a thing of the past that will not recur. Moreover, his persistent problem is not, and has never been, primarily the result of conditions beyond his control. 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 with respect to his financial considerations. Accordingly, allegations 1.a. and 1.b. of the SOR are concluded against 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

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. Government Exhibit 2 (Statement, dated December 3, 2002), at 1.

2. *Id.*

3. *Id.*

4. Government Exhibit 4 (Voluntary Petition, Chapter 13 Bankruptcy, filed July 15, 1994).

5. *Id.* (Bankruptcy File - Summary of Schedules).

6. Government Exhibit 5 (Trustee's Final Report and Account in a Completed Case, dated June 18, 1998), at 1.

7. *Id.*, at 2.

8. *Id.*, at 1; Government Exhibit 2, *supra* note 1, at 1.

9. *Id.* Government Exhibit 2, at 2.

10. Government Exhibit 6 (Voluntary Petition, Chapter 7 Bankruptcy, filed April 26, 2001).

11. *Id.* (Bankruptcy File - Summary of Schedules).

12. *Id.* (Bankruptcy File - Agreement to Reaffirm Debt, dated June 4, 2001)

13. *Id.* (Bankruptcy File - Discharge of Debtor(s), dated August 15, 2001).

14. *Id.* (Bankruptcy File - Schedule I - Current Income of Individual Debtors, undated).

15. *Id.* (Bankruptcy File - Schedule J - Current Expenditures of Individual Debtors, undated).

16. Government Exhibit 2, *supra* note 1, at 3.

17. *Id.*

18. *Id.*

19. *Id.*

20. Tr., at 21-22.

21. Tr., at 24.

22. Tr., at 25.

23. Tr., at 26.

24. Tr., at 27.

25. Tr., at 24.

26. Tr., at 40-41.

27. Tr., at 28.

28. Tr., at 22, 28

29. Tr., at 29.

30. Tr., at 29.

31. Tr., at 43.

32. Tr., at 37.

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.)