

DATE: April 12, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-05638

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Esquire, Department Counsel

FOR APPLICANT

Mr. James Ruswyn Martin, Personal Representative

SYNOPSIS

Applicant's history of outstanding financial indebtedness, which commenced when he married and became an instant father to his own child and three stepchildren, and was exacerbated by six month's of unemployment, has been mitigated by his working two jobs and his recent efforts to fully satisfy all such debts, as well as his new attentiveness to his finances. With all but one of the debts satisfied, and Applicant unable to locate the remaining creditor, the questions and doubts as to his security eligibility and suitability have been satisfied. Clearance is granted.

STATEMENT OF THE CASE

On October 2, 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 response, dated October 17, 2003, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to, and received by, me on November 20, 2003. A notice of hearing was initially issued on November 20, 2003, scheduling the hearing for December 18, 2003, but it was subsequently cancelled. Another notice of hearing was issued on February 23, 2004, and the hearing was held before me on March 18, 2004. During the course of the hearing, four Government exhibits, and three Applicant exhibits, and the testimony of two Applicant witnesses (including the Applicant), were received. The transcript (Tr.) was received on March 30, 2004.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to financial matters 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 41-year-old employee of a defense contractor seeking to obtain a security clearance. He had previously been granted a TOP SECRET security clearance in September 1991.

Applicant's finances were generally in good order until late 1994⁽¹⁾. In June 1994 Applicant's daughter was born,⁽²⁾ and Applicant married the mother of the child the following August.⁽³⁾ In September 1994, Applicant's wife received custody of her three children from a previous marriage.⁽⁴⁾ Shortly thereafter, the condition of his finances began to deteriorate as he had, in a short time, gone from a single man without obligations to a married man with four children.⁽⁵⁾ Exacerbating his financial condition were two factors: first, the biological father of his three step-children could not offer any child support because of a disability,⁽⁶⁾ and second, Applicant was laid off for six months in either 1995 or 1996.⁽⁷⁾

Applicant was indebted to a local credit union, more fully identified in the SOR (subparagraph 1.a.), in the amount of \$4,259.00, for an individual credit card issued to Applicant in May 1994.⁽⁸⁾ He was unable to make timely payments and the account eventually became overdue. As a result, the indebtedness was characterized as a "bad debt," and "charged off."⁽⁹⁾ In 1998, Applicant received a notice indicating the debt had been "charged off" or cancelled.⁽¹⁰⁾ It was his impression that the term "charged off" meant he was no longer responsible for the debt.⁽¹¹⁾ When it became clear to Applicant that his impression regarding responsibility for the debt may have been faulty, he vowed to resolve the debt.⁽¹²⁾ On March 24, 2004, upon being satisfied of his responsibility, Applicant paid the creditor an amount sufficient to satisfy the indebtedness and the account was closed with a "zero" balance.⁽¹³⁾

Applicant was indebted to the same local credit union, more fully identified in the SOR (subparagraph 1.b.), in the amount of \$403.00, for a signature loan granted to Applicant in September 1993.⁽¹⁴⁾ He was unable to make timely payments and the account eventually became overdue. As a result, the indebtedness was characterized as a "bad debt," and "charged off."⁽¹⁵⁾ In 1998, Applicant received a notice indicating the debt had been "charged off" or cancelled.⁽¹⁶⁾ It was his impression that the term "charged off" meant he was no longer responsible for the debt.⁽¹⁷⁾ When it became clear to Applicant that his impression regarding responsibility for the debt may have been faulty, he vowed to resolve the debt.⁽¹⁸⁾ On March 24, 2004, upon being satisfied of his responsibility, Applicant paid the creditor an amount sufficient to satisfy the indebtedness and the account was closed with a "zero" balance.⁽¹⁹⁾

Applicant was indebted to the same local credit union, more fully identified in the SOR (subparagraph 1.c.), in the amount of \$4,069.00, for a truck loan, in the approximate amount of \$15,000.00,⁽²⁰⁾ granted to Applicant in April 1994.⁽²¹⁾ He was unable to make timely payments and the truck was repossessed and sold by the creditor,⁽²²⁾ leaving the unpaid balance.⁽²³⁾ As a result, the indebtedness was characterized as a "bad debt," and "charged off."⁽²⁴⁾ In 1998, Applicant received a notice indicating the debt had been "charged off" or cancelled.⁽²⁵⁾ It was his impression that the term "charged off" meant he was no longer responsible for the debt.⁽²⁶⁾ When it became clear to Applicant that his impression regarding responsibility for the debt may have been faulty, he vowed to resolve the debt.⁽²⁷⁾ On March 24, 2004, upon being satisfied of his responsibility, Applicant paid the creditor an amount sufficient to satisfy the indebtedness and the account was closed with a "zero" balance.⁽²⁸⁾

Applicant was indebted to a real estate rental company, more fully identified in the SOR (subparagraph 1.d.), in the amount of \$648.00, on a joint installment account opened in 1994. In May 1995, the account was characterized as a "bad debt," and charged off."⁽²⁹⁾ Applicant was unaware of the delinquent balance until it was brought to his attention by the investigator conducting a check of his background in August 2001.⁽³⁰⁾ Applicant's wife generally handled the bills at that time and she never informed him of any delinquent balance.⁽³¹⁾ He learned the debt, which he subsequently

disputed, was for repairs and cleaning after he had moved from the apartment.⁽³²⁾ He stated he had cleaned the apartment before he moved and did not believe the debt was valid.⁽³³⁾ Applicant never challenged the amount of the debt or the debt itself with the creditor.⁽³⁴⁾ He subsequently made a number of attempts to locate and discuss the debt with the creditor to resolve the debt but has been unable to do so because none of the telephone numbers or addresses work.⁽³⁵⁾

In August 2001, when he completed a monthly financial statement, Applicant's net remainder, after deducting the family's monthly expenses from the family's monthly net income, was a positive \$431.83.⁽³⁶⁾ However, at that time, the amount included his spouse's monthly net salary of \$150.00.⁽³⁷⁾ That amount can no longer be counted on because Applicant and his wife have been legally separated for about one year and she has serious problems with alcohol.⁽³⁸⁾ Since their separation, Applicant has been more active and attentive to his finances. Moreover, in 1999, Applicant took a second part-time job (10-12 hours per week) at night,⁽³⁹⁾ and between his two jobs, now earns about \$2,600.00 per month.⁽⁴⁰⁾ His current monthly remainder available for discretionary spending is about \$300.00 to \$400.00.⁽⁴¹⁾ Since his separation, he has managed to remain current with all his financial obligations.⁽⁴²⁾

Even though he is separated from his wife, Applicant still has primary custody of his daughter as well as his three stepchildren.

Applicant has been employed as a supply technician by a government contractor since December 2000. According to a longtime friend and former co-worker, he is trustworthy, on time, and dependable.

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,"⁽⁴³⁾ 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. Since getting married and undertaking parental responsibilities for his own newborn child and three stepchildren, and undergoing six months of unemployment, Applicant started falling behind in making payments on three separate accounts (a credit card, a signature loan, and a vehicle loan) with the same creditor. The accounts became bad debts. The vehicle was repossessed and eventually sold by the creditor with a remaining balance of over \$4,000.00. All three accounts were "charged off" and Applicant believed that action absolved him of any further responsibility regarding those debts. The fourth debt with a real estate rental company was not known to him until he was informed of its existence during his DSS interview in August 2001. He subsequently did not dispute it with the creditor or make efforts to pay it off. His actions in failing 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 DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*).

Applicant's financial situation and difficulties also bring this matter within Financial Considerations Mitigating Condition (FC MC) E2.A6.1.3.1. (*the behavior was not recent*); and 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)*). Moreover, Applicant's previous and continuing efforts to resolve all past outstanding financial obligations, as well as current obligations, by holding two jobs, 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*).

The government has dismissed the legal position presented by Applicant that the creditor's earlier action in "charging

off" the debts resulted in his being absolved from further responsibility for those debts. It has, however, offered no legal authority to dispute his contention. Whether his position is legally valid need not be addressed in this instance for Applicant eventually agreed with the creditor of the three debts and made a payment in full satisfaction of those debts. The remaining creditor could not be located notwithstanding Applicant's reasonable efforts to do so. 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.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. Clearance is granted.

Robert Robinson Gales

Chief Administrative Judge

1. Tr., at 54.
2. Government Exhibit 1 (Security Clearance Application (SF 86), dated February 21, 2001), at 3-4.
3. *Id.*, at 3.
4. Applicant's Response to SOR, dated October 17, 2003, at 1.
5. *Id.*
6. *Id.*
7. There is some inconsistency regarding the date of the layoff, for in his SF 86, Applicant indicated the layoff occurred in 1996 (Government Exhibit 1, *supra* note 2, at 2), as he did in a subsequent statement (Government Exhibit 2 (Statement of Subject, dated August 21, 2001), at 1), but in his more recent Response to SOR, he stated it occurred in 1995 (*id.*).
8. Government Exhibit 3 (Report of Credit, dated May 16, 2001), at 3.
9. *Id.*

10. Government Exhibit 2, *supra* note 7, at 1; Response to SOR, *supra* note 4, at 1.
11. *Id.*
12. Tr., at 50-51.
13. Applicant Exhibit C (Letter from Creditor, dated March 24, 2004).
14. Government Exhibit 3, *supra* note 8, at 3.
15. *Id.*
16. Government Exhibit 2, *supra* note 7, at 1; Response to SOR, *supra* note 4, at 1.
17. *Id.*
18. Tr., at 50-51.
19. Applicant Exhibit C, *supra* note 13.
20. Tr., at 40.
21. Government Exhibit 3, *supra* note 8, at 3.
22. Tr., at 21, 24.
23. Tr., at 21-22.
24. *Id.*
25. Government Exhibit 2, *supra* note 7, at 1; Response to SOR, *supra* note 4, at 1.
26. *Id.*
27. Tr., at 50-51.
28. Applicant Exhibit C, *supra* note 13.
29. Government Exhibit 3, *supra* note 8, at 2-3.
30. Response to SOR, *supra* note 4, at 1.
31. *Id.*
32. Government Exhibit 2, *supra* note 7, at 1.
33. *Id.*
34. Tr., at 44.
35. Applicant Exhibit B (Applicant's letter to Department Counsel, dated March 24, 2004).
36. Government Exhibit 2, *supra* note 7, at 3.
37. *Id.*
38. Tr., at 46.

39. Response to SOR, *supra* note 4, at 1-2.

40. Tr., at 30-31.

41. Tr. at 31.

42. Tr., at 54.

43. 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.)