

DATE: April 29, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0794

DECISION OF ADMINISTRATIVE JUDGE

ROBERT R. GALES

APPEARANCES

FOR GOVERNMENT

William S. Fields, Esquire, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On December 4, 1997, 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 January 6, 1998, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on a written record, in lieu of a hearing. Department Counsel submitted the Government's written case on January 27, 1998. A complete copy of the file of relevant material (FORM)⁽¹⁾ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response, dated February 27, 1998.⁽²⁾ The case was initially assigned to Administrative Judge Kathryn Moen Braeman on March 10, 1998, but due to caseload considerations, was subsequently reassigned to, and received by, this Administrative Judge on April 27, 1998.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to financial considerations under Criterion F. 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 38 year old male employed by a defense contractor, and he is seeking to retain the SECRET security

clearance which was granted to him in May 1990.

Applicant has seemingly been financially overextended since about 1990, and as a consequence, he has established a history of not meeting his financial obligations. Following his release from active duty in December 1989, Applicant was unable to find employment for about four months.⁽³⁾ As a result, he fell behind in his monthly mortgage payments and a variety of other accounts. He eventually obtained employment, and has been gainfully employed since April 1, 1990. His employment has included overseas assignments during the periods April 1990 through September 1991, and November 1993 through the present. He has been employed by his current employer, overseas, since January 1996.

Applicant had purchased a residence in 1984 for \$35,750.00, and routinely made timely mortgage payments until his December 1989 discharge from active duty. The loan was eventually defaulted, and a deficit principal balance of \$21,500.00 was established by the ----- . Although the account was placed for collection in March 1992, Applicant made no effort to satisfy the outstanding financial obligation until December 1997. On December 16, 1997, the DVA approved Applicant's proposal for a repayment plan and agreed to accept monthly payments of \$500.00, commencing in January 1998.⁽⁴⁾ He made his initial payment on January 21, 1998.⁽⁵⁾ The Government has offered no evidence to rebut Applicant's contention that this financial obligation is in the process of being resolved.

An indebtedness with the Internal Revenue Service (IRS) for federal income tax obligations for the tax years 1992-93 was also created by Applicant's failure to pay the required income tax. Although Applicant never received any correspondence from the IRS while he was residing overseas, he recognized his responsibility and commenced making periodic payments in January 1994. His initial January 1994 payment was \$100.00; his next payment during the summer of 1995 was for \$200.00; and his next payment in January 1996 was for \$500.00. Another payment of \$629.31 was made on August 5, 1997; and monthly payments of \$500.00 were made until the entire balance was paid off on November 14, 1997, before the SOR was issued.⁽⁶⁾ The Government has offered no evidence to rebut Applicant's contention that this financial obligation has been satisfied.

Applicant resided in a mobile home park where he rented a motor home during the early 1990's. When he encountered problems with the maintenance, he requested that the motor home owner make the necessary repairs. The owner refused to do so. Applicant took several days off, made the repairs himself, and asked the owner to reimburse him.⁽⁷⁾ An impasse developed and the owner filed an action against Applicant for "summary ejection." The owner was successful, and in August 1993, a judgment was entered against Applicant in the amount of \$785.00 plus court costs and interest. Applicant refused to make any payments because of the dispute, and the balance eventually escalated to \$1,121.35. He steadfastly refused to satisfy the judgment, and stated that he would continue to do so unless his refusal might affect his security clearance.⁽⁸⁾ His receipt of the SOR brought him to the conclusion that it just might do so. Finally, on January 22, 1998, Applicant issued a cashier's check to the court in the amount of \$1,121.35, and the outstanding judgment was satisfied.⁽⁹⁾ The Government has offered no evidence to rebut Applicant's contention that this financial obligation has been satisfied.

Applicant held a bank credit card during the period 1988-89. When he closed the account, he believed there was a *zero* balance.⁽¹⁰⁾ However, during the investigation conducted by the Defense Security Service, formerly known as the Defense Investigative Service (DIS), it was revealed that there still might be a balance of \$97.00. The supposedly delinquent account had been turned over to a collection agency in about February 1994 by the successor to the original creditor. As he was residing overseas, Applicant was unaware of the supposed delinquency until so advised by DIS. Applicant attempted to verify the delinquent account which is referred to in a credit report as *paid charge off*,⁽¹¹⁾ but a subsequent letter from the successor to the original creditor claimed that there was "no outstanding collections."⁽¹²⁾ The Government has offered no evidence to rebut Applicant's contention that this financial obligation has been satisfied.

As of July 1997, Applicant's income and living expenses resulted in a positive monthly remainder of nearly \$700.00.⁽¹³⁾ When DIS interviewed Applicant, it was apparent that he also had other unpaid accounts. He immediately contacted the listed creditors and made payments to satisfy all of those other accounts.⁽¹⁴⁾ The Government has offered no evidence to rebut Applicant's contention that he is current in all other financial obligations.

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 Factors) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Factors).

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--an expansion of the factors set forth in Section F.3. 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:

[Financial Considerations - Criterion F]: 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 include:

- (1) a history of not meeting financial obligations;
- (3) inability or unwillingness to satisfy debts;

Conditions that could mitigate security concerns include:

- (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);
- (6) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Since the protection of the national security is the paramount determinant, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security,"⁽¹⁵⁾ or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded that both standards are one and the same. In reaching this Decision, I have endeavored to draw only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have attempted to avoid drawing inferences that are 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, that 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 that 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 that 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 that 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 loyalty and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that 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 loyalty and patriotism. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied decision as to Applicant's 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 and factors, including those described briefly above, I conclude the following with respect to the allegation set forth in the SOR:

With respect to Criterion F, the Government has established its case. Applicant has been portrayed as a person who is financially overextended, with a history of bad debts and delinquent accounts, and who, until recently, has displayed an indifference to, or disregard of, those financial obligations, with little or no apparent or voluntary effort to satisfy them. Based on the evidence, I conclude that the characterization is superficially true, but unduly harsh.

Applicant's initial financial difficulties commenced about the time he left active duty and found himself temporarily unemployed. As a result, Applicant began experiencing some financial difficulties and routine payments on some accounts started coming in late. Some accounts went to collection, and Applicant's residence was eventually repossessed. Applicant's overall conduct pertaining to his financial obligations clearly fall within Financial Considerations Disqualifying Factor (DF) 1 and DF 3.

The Government has offered no evidence to support a conclusion that Applicant had been living in a lifestyle reflecting irresponsible, reckless, or improvident expenditures. Rather, his initial financial problems were seemingly caused by his unemployment, and clearly fall within Financial Consideration Mitigating Factor (MF) 3. When Applicant was interviewed by DIS and shown a copy of a credit report, he first learned that there were still a number of unsatisfied financial obligations listed. His initial reaction was to check up on all of the accounts and try to satisfy them. Of the four alleged overdue financial obligations in the SOR, Applicant satisfied one creditor before the SOR was even issued; paid off another indebtedness shortly thereafter; agreed to a repayment plan with another creditor, and immediately commenced making significant payments to satisfy that indebtedness; and approached the fourth creditor with the intention of resolving the debt, only to be told by that creditor that there was no current indebtedness. His actions in this regard reflected a good-faith effort to repay overdue creditors or otherwise resolve debts, and fall within MF 6.

Obviously, there is some legitimate concern about the failure of Applicant to resolve his outstanding financial obligations at some earlier time, especially since he apparently had sufficient funds to do so. The indebtedness to the --- was incurred in the early 1990's and placed for collection in March 1992; the indebtedness with the IRS was created in 1992-93; the dispute with the motor home owner was established in August 1993; and the supposed indebtedness with the credit card was from the mid 1990's. Applicant explained that he has been employed overseas for extensive periods during that time, and remains so to this day, and that he has never received any correspondence from his creditors, and that, until recently, he had never seen a credit report. Taken at face value, in the absence of evidence to the contrary, the explanation seems reasonable.

Under the evidence as presented, I am unable to find bad faith on the part of Applicant, for it is inconsistent with his expressed desire, and proven efforts, to resolve all outstanding balances for which he is responsible. In light of his recent efforts towards all of his creditors, in this instance, his failure to take such action earlier should not be construed as indifference or viewed as a DF. Now that the credit information has been made available to him, Applicant has taken prompt corrective action.

I do not take this position lightly, but based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my evaluation of the evidence, and my application of the pertinent factors under the Adjudicative Process, I believe that Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the Government's case. Accordingly, allegations 1.a. through 1.e. of the SOR are concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is suitable for access to classified information.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1. Criterion 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

Subparagraph 1.e.: 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 R. Gales

Chief Administrative Judge

1. The Government submitted seven items in support of its contentions.
2. The Response to the FORM was erroneously dated February 27, 1997.
3. *See* Item 4 (Security Clearance Application, SF 86, dated May 1, 1996)(SF 86), at 3.
4. *See* Letter from DVA, dated December 16, 1997, attached to Applicant's response to the FORM.
5. *See* Payment Receipt, dated January 21, 1998, attached to Applicant's response to the FORM.
6. *See* Item 3 (Affidavit, dated January 6, 1998). *See also* Item 4 (SF 86) at 1; and Item 6 (Statement of Subject, dated November 4, 1996) at 1.
7. *See* Item 6, *id.* at 1-2.

8. *See* Item 5 (Statement, dated July 22, 1997) at 1.
9. *See* Judgment Calculation, dated January 22, 1998, attached to Applicant's response to the FORM.
10. *See* Item 6, *supra* note 6, at 2.
11. *See* Credit Report, dated January 21, 1998, attached to Applicant's response to the FORM.
12. *See* Letter from creditor, dated February 19, 1998, attached to Applicant's response to the FORM.
13. *See* Item 5, *supra* note 8, at 3.
14. *Id.* at 1.
15. *See*, Executive Order 12968, "*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. However, the Directive uses both "clearly consistent with the national interest" (*see*, Sec. B.3; Sec. C.2.; and Sec. D.2.; Enclosure 3, Sec. 1.; and Sec. 25), and "clearly consistent with the interests of national security" (*see*, Enclosure 2 (Change 3), Adjudicative Guidelines, at 2-2).