

DATE: July 2, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-05705

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Government's evidence is insufficient to establish that applicant is indebted as alleged. Clearance is granted.

STATEMENT OF THE CASE

On September 21, 2001, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, (as administratively reissued on April 20, 1999), 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 clearance should be denied or revoked.

Applicant responded to the SOR in writing on October 4, 2001. The case was assigned to the undersigned on May 7, 2002, and a Notice of Hearing was issued on May 13, 2002. The hearing was held on June 5, 2002. The transcript was received on June 18, 2002.

FINDINGS OF FACT

Applicant is a fifty year old quality assurance inspector. He has worked for his defense contractor employer for twenty years.

Applicant and his first wife were married in 1972 and divorced in 1977. They had three children. Following the divorce, applicant was ordered by the State of Illinois to pay child support. Applicant paid the child support as ordered, even after he moved to a different State (State A). In 1986, applicant was served with a petition filed in State A court by his ex-wife and the Attorney General of Illinois. The petition, which was based on false sworn testimony from the ex-wife, claimed that applicant had not made the required support payments, and sought an order from the State A court requiring applicant to make the payments (Exhibit D). Applicant hired an attorney and appeared in court to respond to

the petition. He provided the court with copies of cancelled checks sent to the ex-wife which contradicted the ex-wife's sworn testimony. The court gave Illinois an opportunity to explain the discrepancy, but Illinois never responded. The court, after first finding that (1) the past-due support payments alleged in the petition were in question, and (2) Illinois was asked to investigate the matter but never responded to the court's request, ordered applicant to send his future payments directly to State A authorities, which would then forward them to Illinois (Exhibit J). Applicant complied with the order from the State A court.

Although it is not entirely clear from the evidence, it appears that in 1988 or 1989, applicant was again forced to appear in a State A court and defend himself against a claim by his ex-wife and the Illinois Attorney General that he was still behind on his support payments. The State of Illinois again failed to respond to written inquiries from applicant's lawyer and State A authorities, and in December 1989, the State A court dismissed the action.

At present, the Government alleges that applicant is indebted to both the State of Illinois and his ex-wife in the total amount of \$10,568.00. The only evidence offered to support these allegations is a credit report (Exhibit 4) and an incomprehensible computer printout from Illinois (Exhibit 5).

POLICIES

Enclosure 2 of the Directive sets forth Guidelines (divided into conditions that could raise a security concern and conditions that could mitigate security concerns) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

Financial Considerations

Conditions that could raise a security concern:

None.

Conditions that could mitigate security concerns:

None.

CONCLUSIONS

After considering the evidence presented, it is clear that the State of Illinois took action against applicant without conducting a proper investigation of the matter. What is more incredible is their failure to investigate the matter after applicant, his lawyer, and State A presented them with information that contradicted the information they were relying upon to support their position that applicant had not made the required child support payments. Despite significant, credible evidence to the contrary, Illinois continues to claim that applicant is indebted to Illinois and his ex-wife for past-due child support payments.

The only evidence offered by the Government concerning applicant's alleged indebtedness comes from the Illinois bureaucracy. Based on (1) the failure of Illinois to provide any support for their claim (other than false testimony from the ex-wife) that applicant did not make the support payments as ordered, and (2) applicant's credible evidence that he made all of the support payments that he was ordered to make, I conclude that applicant is not indebted as alleged.

FORMAL FINDINGS

PARAGRAPH 1: 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.

Joseph Testan
Administrative Judge