

DATE: May 23, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-07308

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

Jeffrey W. Peters, Esq.

SYNOPSIS

Applicant fell behind on his financial obligations when he was a young, enlisted operations specialist in the military with four dependents to support. He stopped payment on a \$6,000.00 consolidation loan in 1996 and an automobile was repossessed in October 1996, leaving him with a deficiency balance. Since going to work for a defense contractor in November 1998, he has not incurred any new delinquencies. He began on his own in 1999 to repay the consolidation loan. Since September 2001, he has been working with a consumer credit counseling service to resolve the consolidation debt, which is down to \$2,900.00, and the repossession debt of \$9,417.37. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated November 23, 2001, to the 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 the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on financial considerations (guideline F) related to unresolved financial delinquencies and a reported negative monthly cash flow.

On December 27, 2001, Applicant, then acting *pro se*, responded to the allegations set forth in the SOR and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on January 30, 2002. Pursuant to formal notice dated February 25, 2002, the hearing was scheduled for arch 21, 2002. At the hearing, which was held as scheduled, four Government exhibits and three Applicant exhibits were admitted into the record. Applicant and four coworkers testified on Applicant's behalf. At the close of the evidence, Department Counsel moved to withdraw SOR subparagraph 1.c. as the debt had been deleted from Applicant's credit record. Applicant having no objection thereto, the motion was granted. With the receipt on March 29, 2002, of the transcript of the hearing, this case is ripe for a decision.

FINDINGS OF FACT

After a thorough review of the evidence, and on due consideration of the same, I render the following findings of fact:

Applicant is a 31-year-old test engineer who has been employed by a defense contractor since November 1998. Applicant seeks to retain a Secret security clearance which was granted to him in connection with that employ.

During the spring semester of his senior year of high school, Applicant in March 1998 married his spouse and their first child was born that May.

Following his graduation from high school, Applicant in June 1989 entered on active duty in a branch of the United States military where he served as an air flight intercept controller. Circa June 1990, he was granted a Secret security clearance for his military duties.

While he was serving on active duty, he and his spouse had two more children, sons born in September 1990 and April 1992. With three children to support and a spouse who had a drinking problem, Applicant and his family were barely making ends meet. Applicant failed to adequately monitor the family's spending habits, and his spouse withdrew funds on occasion without his knowledge from the checking account, which caused some checks to bounce. An unpaid balance of \$688.00 was placed for collection by his local telephone service provider (creditor #1) in April 1995 when he was deployed to sea. In October 1995, a check cashing company (creditor #2) placed a \$272.00 delinquent balance for collection.

In March 1996, after his car died, Applicant leased a new economy car for \$315.00 per month. Applicant agreed to pay an extra \$300.00 per month for the first three months of the lease term in lieu of a down payment. The week after he entered into the lease, his spouse lost her job. Applicant paid between \$400.00 and \$500.00 toward the car for the first three months, which the lessor applied to the down payment. Three months into the lease, Applicant was notified by the lessor (creditor #3) that his account was considered delinquent as he was two to three months behind in his payments. Applicant informed the creditor he would send a payment immediately by wire transfer to be followed by payments every military payday over the next two months to bring the account into good standing. In October 1996, the lessor repossessed the automobile as there had been no payment since August 1996. Applicant arranged to borrow the funds from his in-laws to pay the balance owed, but the creditor informed him payment would not result in return of the automobile. Applicant was advised the automobile would be sold and he would be responsible for any deficiency balance. Applicant assumed the creditor would notify him of any amount owed. When the creditor did not contact him about a deficiency balance, Applicant assumed the car had been sold for what he owed on the lease. Three months after the repossession, Applicant purchased a used car. A credit check conducted at that time revealed the repossession without an outstanding balance due, which led him to believe he owed no money.

At the time of the repossession, Applicant contemplated filing for bankruptcy to protect his wages from possible garnishment. On the advice of an attorney, Applicant stopped making his \$134.00 monthly payments on a consolidation loan which he had taken out for \$6,000.00 from a military credit union (creditor #4) in August 1996. Three months after he consulted with the attorney, Applicant elected not to pursue bankruptcy as he had been advised by his lead petty officer that he could lose his security clearance if he filed. After he had made no payments on his consolidation loan for three months, Applicant contacted the credit union and offered to make small payments. When his offer was refused, Applicant made no further effort to contact creditor #4 until after he was interviewed by a special agent of the Defense Security Service in February 1999.

In April 1997, Applicant's long distance telephone service provider (creditor #5) placed a \$604.00 balance for collection. In June 1997, a \$280.00 debt related to bad checks was placed for collection by creditor #2. The checks bounced due to Applicant's failure to adequately monitor his spouse's spending habits.

In July 1997, Applicant financed the purchase of an automobile at a cost of \$15,511.00 with terms of repayment at \$261.00 per month for 54 months. Applicant managed to remain current in his payments on that automobile loan.

In August 1998, Applicant's spouse opened a credit card account on which she accrued a \$6,029.00 balance by September 2001. Applicant and his spouse managed to remain current on that account.

In late October 1998, Applicant was discharged honorably from active duty at the rank of petty officer second class (E5). Within a week, he went to work for his current employer, performing air intercept controller work similar to what he had engaged in as an operations specialist in the military.

In conjunction with his defense-related employment, Applicant executed a security clearance application, EPSQ version (SF 86), on November 6, 1998. In response to question 35 regarding any property having been repossessed in the last seven years, Applicant listed the 1996 repossession of his automobile on which he owed \$9,000.00.⁽¹⁾ In response to whether he had been over 180 days delinquent on any debts in the last seven years (question 38) and whether he was currently over 90 days delinquent on any debts (question 39), Applicant listed two signature loans in the amounts of \$3,400.00 each owed the military credit union (creditor #4). Applicant added that he was unsure of all his outstanding debts.

In December 1998, Applicant and his spouse had their fourth child, another son.

During the course of its investigation into Applicant's background, the Defense Security Service conducted a credit check on February 16, 1999, which disclosed the involuntary repossession of his automobile in 1996 with no outstanding balance reflected and one bad debt in the amount of \$3,319.00 owed the military credit union. Four accounts placed for collection between April 1995 and April 1997 with an aggregate balance of \$1,844.00 were reported as unpaid. Applicant's automobile loan taken out in July 1997, on which he had a \$7,099.00 balance, was rated "pays as agreed."

On February 24 and 25, 1999, Applicant was interviewed by a DSS special agent about the adverse financial information reflected on his credit report. Applicant discussed the repossession of his automobile in 1996, but expressed his belief the matter was resolved as the creditor did not contact him after the repossession. As for the loan balance with the military credit union, Applicant admitted he stopped making payments in anticipation of a bankruptcy filing. He explained that when he decided not to file for bankruptcy, he offered to forward small payments to the credit union, but the credit union refused his offer. He admitted he had not attempted to contact the creditor since. Regarding the insufficient funds check debts, Applicant indicated his spouse took money out of their account and he was unaware of the existence of the debts. The outstanding balance reportedly due the local telephone service provider since 1995 was incurred by a roommate of his spouse's when he was deployed. Applicant explained he was being held responsible since the telephone was in his name. With respect to the \$604.00 placed for collection by his long distance provider in April 1997, Applicant admitted his phone service had been shut off for lack of payment, but he thought he had satisfied his obligation with the creditor "a long time ago." Applicant indicated that until he secured his present employment, he was not earning enough to take care of his old debts. Applicant maintained he had been working to establish good credit in the last two years and would attempt to arrange for repayments with his creditors, including contacting a consumer credit counseling service if necessary. Applicant denied any vulnerability because of these unpaid obligations as his employer was aware of his credit problems.

During the course of his interviews with the DSS agent, Applicant executed a Personal Financial Statement on which he reported a net monthly positive balance of \$78.00, which did not include any payment on his old debts. Advised by the agent that he should lower his debt as quickly as possible, Applicant in April 1999 began paying the military credit union \$100.00 per month. As of September 2001, Applicant had reduced the outstanding balance owed the credit union to \$3,164.77. Applicant also attempted to contact creditor #2, who responded with demands of payment in full and threats of court action.

In July 1999, Applicant opened a credit card account on which he accrued a \$5,249.00 balance by September 2001. Applicant and his spouse managed to remain current on that account, making mostly the minimum payments.

In February 2000, Applicant applied for a consolidation loan in the amount of \$6,000.00. The loan was denied due to his credit history. Circa February/March 2000, Applicant briefly separated from his spouse because of issues related to her drinking and finances. Applicant rented for her an apartment for one month while he maintained custody of their children and took control of the family's finances. This separation cost them about \$500.00 in rent and utility costs. They reconciled after she received outpatient counseling at a local alcohol rehabilitation center.

In an effort to improve the family's financial situation, Applicant's spouse in about March 2000 went to work on a part-time basis as a supervisor at a local supermarket. As of early October 2001, her monthly net salary was \$520.00.

In September 2000, Applicant financed the purchase of a minivan through a loan of \$19,044.00 with repayment at \$443.05 per month for sixty months. (2) At the time of the car purchase, a credit check was run which did not disclose any balance owed creditor #3 after the 1996 repossession. Applicant disclosed to his new lender that he had an automobile repossessed in 1996.

Candid with his supervisor about his past credit problems, Applicant on the advice of his supervisor contacted a consumer credit counseling service (CCCS) on or before September 27, 2001. A check of Applicant's credit was conducted for CCCS which disclosed a \$9,417.00 outstanding balance owed creditor #3 as well as the \$3,000 plus owed the military credit union and \$688.00 for the collection debt placed by creditor #1. Applicant's car loan for the minivan, which was current, had a reported balance of \$16,526.00. In addition, he had several credit card accounts on which he was making small payments on an aggregate outstanding balance in excess of \$14,000.00. On October 5, 2001, Applicant received confirmation from creditor #3 that he owed \$9,417.37 following the repossession.

At the request of DOHA, Applicant on October 27, 2001, executed financial interrogatories. Applicant acknowledged he had stopped paying some creditors in the past, including his consolidation loan with the military credit union, but that he had been paying that creditor since shortly after his DSS interviews. Citing his favorable management of his finances in the last three years, Applicant indicated he did not pursue any assistance through CCCS earlier because he thought CCCS would lump his bad credit with his good credit. Applicant indicated he would be able to afford the monthly payments to CCCS after one of his car loans was paid off in December 2001. Submitted with his response was a personal financial statement dated October 4, 2001, on which he reported a net monthly balance of negative \$280.14 after payment of those accounts rated as current. Applicant also indicated thereon that the statement did not accurately reflect his net monthly remainder, as he and his spouse usually either break even or are a little ahead each month.

Surprised by his accounting which reflected a negative cash flow each month, Applicant in about late October 2001 took a second job working third shift (12:30 a.m. to 5:30 a.m.), between twenty-one and twenty-six hours per week, stocking shelves for a local supermarket. Applicant intends to keep this second job until at least all his debts are satisfied.

With joint net earnings per month of \$4,204.00, which included \$1,000.00 from Applicant's part-time job, Applicant and his spouse estimated for CCCS a net monthly remainder of \$458.00 after payment of living expenses and debts. Applicant and a CCCS counselor worked up a debt management plan which would require Applicant to pay \$314.00 per month to CCCS, commencing in January 2002. In turn, CCCS was to make payments to creditors #3 and #4. Under the plan, Applicant was to continue to pay directly those accounts which were current. Applicant was advised by the CCCS counselor to: watch all spending, including living expenses; to cease the use of credit; to send the CCCS extra money when able to reduce the amount of time on the debt management plan; to make double payments on his credit card debts; to save for periodic expenses and to start saving for unexpected expenses. On the advice of CCCS, Applicant had the debts reportedly owed creditor #2 deleted from his credit record. As of December 2001, Applicant was taking a twelve-month course sponsored by CCCS to learn how credit works and how to properly manage credit.

Circa late 2001/early 2002, Applicant refinanced his automobile loan which he had taken out in September 2000, reducing the monthly payment from \$443.05 to \$380.00 per month.

In January 2002, Applicant paid off the automobile loan which he had opened in July 1997. On satisfaction of that auto loan, he began paying CCCS \$314.00 per month in accord with the debt management plan. Under that plan, Applicant's payments to the military credit union (creditor #4) were \$69.00 per month, rather than the \$100.00 he had paid through December 2001. As of March 2002, Applicant estimated the balance owed creditor #4 to be "roughly \$2,900.00." Unsuccessful in his efforts to obtain documentation regarding the collection debt reportedly owed creditor #1 since April 1995, Applicant requested that debt be deleted from his credit record.

Sometime after October 2001, Applicant's rental housing obligation increased by \$25.00 to \$675.00 per month. With about a 4.6 % raise effective January 2002, he estimates his salary from his defense-related job to be roughly \$40,100.00 per year. As of March 2002, he was paying a little extra than the minimum in an effort to reduce his \$14,000.00 to

\$15,000.00 in credit card debt. Applicant was no longer using personal credit cards and the family was keeping within the household budget.

As of March 2002, Applicant's spouse was working between seventeen and twenty hours per week at the supermarket. She has applied for a full-time position.

Applicant's continued access to classified information is supported by his defense employer, who is aware of Applicant's debt problems and his recent efforts to resolve his indebtedness. A hard worker who is considered a vital employee because of his expertise, Applicant enjoys the respect of his direct and second-level supervisors and his coworkers. Applicant's overall work performance was rated as outstanding for the periods from May 1999 to May 2000 and June 2000 to May 2001.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Financial Considerations

E2.A6.1.1. The Concern: 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.

E2.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations

E2.A6.1.2.3. Inability or unwillingness to satisfy debts

E2.A6.1.3. Conditions that could mitigate security concerns include:

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)

E2.A6.1.3.4. The person has received counseling for the problem and there are clear indications that the problem is being resolved or is under control

E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an

applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to guideline F:

As a young enlisted serviceman with four dependents (spouse and three children), Applicant began to experience financial difficulties in the mid-1990s, due largely to a failure to adequately monitor his as well as his spouse's spending. The family's financial situation was also negatively impacted by his spouse withdrawing funds via automatic teller without his knowledge, funds which she used to support her alcohol problem. In 1995, the local telephone service provider as well as a check cashing company placed for collection past due balances of \$688.00 and \$272.00, respectively. The financial difficulties increased once Applicant leased an automobile in March 1996. Lacking the required down payment, Applicant agreed to pay an extra \$300.00 per month for the first three months. Unable to afford the \$615.00 monthly payment, Applicant paid between \$400.00 and \$500.00 each month, but his automobile was repossessed in October 1996. In anticipation of a bankruptcy filing, Applicant stopped payment at that time on a \$6,000.00 consolidation loan which he had taken out with the credit union in August 1996. On the advice of his lead petty officer, Applicant elected not to file for bankruptcy in early 1997. Applicant offered to make small payments on his consolidation loan. When the credit union rejected his offer, Applicant made no further payments while he purchased an automobile in July 1997 at a cost of \$15,511.00, with terms of repayment at \$261.00 per month for 54 months. He managed to remain current on this automobile loan, but failed to address some collection debts or the loan consolidation debt.

In September 2001, Applicant learned he was being held responsible for a \$9,417.37 balance following the sale of the automobile repossessed in October 1996. Given he was not contacted by the creditor about an outstanding balance, and checks of Applicant's credit prior to September 2001 did not reveal any delinquency to creditor #3, it is credible Applicant was unaware until recently that he still owed creditor #3. Although Applicant did not knowingly disregard this sizable financial obligation, it must be taken into account in assessing Applicant's current financial status. Indeed, the Government alleged as a concern Applicant's reported negative monthly cash flow as of October 2001. Under the adjudicative guidelines pertinent to financial considerations, disqualifying conditions E2.A6.1.2. (a history of not meeting financial obligations) and E2.A6.1.2.3. (inability or unwillingness to satisfy debts) are pertinent to an evaluation of Applicant's security worthiness.

Security significant financial considerations are potentially mitigated under the Directive if the behavior was not recent

(E2.A6.1.3.1.), it was an isolated incident (E2.A6.1.3.2.), the conditions that resulted in the behavior were largely beyond the person's control (E2.A6.1.3.3.), the person has received or is receiving counseling for the problem, and there are clear indications that the problem is being resolved or is under control (E2.A6.1.3.4.), or the individual initiated a good-faith effort to repay creditors or otherwise resolve debts (E2.A6.1.3.6.). As of March 2002, Applicant owes some \$12,000.00 in delinquent debt, approximately \$14,000.00 in individual and/or joint credit card debt and \$15,000.00 plus on a car loan. While he has managed to remain current on those credit card accounts opened after he started working for the defense contractor and on his car loans, his financial problems are viewed as recent and not isolated. It is clear from the evidence that Applicant fell behind on more than just the two major debts (the consolidation loan and repossession debt) alleged in the SOR. Whereas Applicant's spouse lost her job within a week after they entered into the lease agreement in March 1996, the family's financial situation was impacted by factors beyond Applicant's control. However, Applicant's financial difficulties stem in large part from poor financial decisions made even before his spouse lost her job. Overextended financially, not only did Applicant and his spouse lack the down payment for the lease of the car, but they needed a \$6,000.00 consolidation loan from the credit union in August 1996.

After Applicant was interviewed by the DSS agent in February 1999, he began repayment of the delinquent consolidated loan debt at the rate of \$100.00 per month. Yet, he and his spouse also continued to rely extensively on credit. Over the 1999 to 2001 time frame, Applicant and his spouse ran up some \$14,000.00 plus in credit card debt. While he managed to remain current in his credit card obligations by making at least the minimum monthly payments, which is evidence of an ability to pay his just debts, the reliance on credit confirms the lack of any financial reserves. However, in the last six months, Applicant has made enough of a good faith effort to resolve his delinquent accounts, and to educate himself about the proper use of credit, to warrant continuation of his security clearance. Candid with his employer about his financial difficulties, Applicant followed the advice of his supervisor and sought the assistance of CCCS in September 2001. Applicant arranged for repayment of the consolidation loan and the repossession debt through CCCS. In December 2001, he began attending sessions about the proper use of credit offered by CCCS and he no longer relies on credit, electing to pay his bills through money order or by check. Applicant is directly paying those obligations which are current and he has a sufficient track record over the past couple of years of timely payments to where it is likely he will continue to meet his monthly obligations.

The Government's concerns about whether Applicant has the financial means to make these payments have been adequately overcome by an increase in the family income, due primarily to Applicant taking on a second job in late October/early November 2001. After Applicant received financial interrogatories from DOHA, he executed a personal financial statement in which he came up with a significant negative monthly cash flow. Maintaining the net monthly remainder was not accurate as they usually had enough to meet their expenses, Applicant nonetheless was sufficiently concerned to seek supplemental income. With his earnings from his job at a local supermarket, Applicant estimated for the CCCS that he had a monthly surplus of \$458.00, which was before a recent 4.6% raise in his defense-related earnings. Although Applicant has not yet satisfied those debts alleged in subparagraphs 1.a. and 1.b., these delinquencies are in the process of being resolved. Subparagraph 1.d. is also found in his favor as he has the discretionary funds available to address his indebtedness and he has adopted a more responsible attitude toward his financial obligations.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline F: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: Withdrawn

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.

Elizabeth M. Matchinski

Administrative Judge

1. Applicant knew he owed \$9,000.00 on the lease at the time of the vehicle repossession. It was not established that he was aware as of November 1998 that he was being held responsible for the balance of his lease.
2. Applicant testified he and his spouse tried to purchase a used minivan but it was not approved. (Transcript p. 68).