

DATE: December 11, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-09691

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

Peter D. Webb, Esq.

SYNOPSIS

With a \$558.00 debt to a college outstanding, Applicant incurred additional delinquency after her spouse suffered an unexpected medical emergency and she lost her job in 1997. Two delinquent credit card accounts with balances of \$461.28 and \$6,838.00, and \$4,500.00 in mortgage transfer costs went unpaid after Applicant secured full-time employment with a defense contractor. Over the 2000/01 time frame, Applicant and her spouse took on car lease payments of \$328.00 and \$336.00 per month for two vehicles as several small medical debts were placed for collection due to nonpayment. Aware since January 2002 that her debts raised a security concern, Applicant has made no payments toward any of the delinquencies. Clearance is denied.

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 January 30, 2002, 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) because of unpaid delinquencies totaling \$13,270.00.

On February 20, 2002, Applicant, acting *pro se*, submitted a response to the SOR, admitting some of the debts, and she requested a hearing before a DOHA Administrative Judge. Her answer was not considered responsive as it was not notarized. On June 5, 2002, Applicant signed a copy of her original response before a notary. On July 17, 2002, the case was assigned to me for a hearing. Pursuant to formal notice dated August 16, 2002, a hearing was scheduled for September 20, 2002.

At the hearing held as scheduled, the Government's case consisted of eight documentary exhibits. Legal counsel for Applicant presented Applicant's testimony. At the close of the evidence, the Government withdrew SOR allegation 1.h. on the basis the account had been paid. With the receipt on October 1, 2002, of the transcript of the proceedings, this case is ripe for a decision.

FINDINGS OF FACT

In her answer to the SOR, Applicant admitted the outstanding indebtedness alleged in subparagraphs 1.b. (\$4,500.00 to a mortgage company), 1.c. (\$57.00 for radiology services), 1.e. (\$6,838.00 in credit card debt owed to a retailer no longer in business), and 1.f. (\$558.00 to a college). With respect to subparagraph 1.a., Applicant acknowledged an outstanding balance owed on the credit card, but disputed the amount of the debt. After a thorough review of the evidence, I render the following findings of fact:

Applicant is a 46-year-old high school graduate with some college studies, who has been employed by a defense contractor since June 1998. On August 7, 1999, Applicant was granted an interim secret clearance for her duties. After issuance of the SOR, Applicant's interim clearance was withdrawn and in April/May 2002, she was transferred from the position of assembler to the stockroom due to the loss of access.

From August 1993 to mid-January 1997, Applicant worked as a senior assembler for an audio electronic equipment manufacturer (company A). In December 1993, Applicant enrolled in a course at a local college, incurring a debt of \$429.00 (SOR subparagraph 1.g.; debt #1). Applicant did not pay the debt, and in ay 1995, a \$558.00 balance was placed for collection.

In mid-January 1997, Applicant left the employ of company A for the position of lab manager at a facility (company B) nearer to her residence. Her second day on her new job, Applicant's spouse suffered from an aneurysm which required surgery. With medical coverage under her new employment not taking effect for ninety days, Applicant continued her medical insurance from company A, at an out-of-pocket cost to her of \$460.00 per month. As a result of his illness, Applicant's spouse was unemployed for three months. The family's financial situation was negatively impacted by his loss of earnings and unexpected payments of about \$1,380.00 for medical insurance.

Circa April 1997, Applicant's spouse returned to work, at the same salary he had earned before his illness. That same month, Applicant and her spouse purchased their present residence- a small split-level with no garage- assuming the mortgage of the previous owners. While Applicant managed to make their mortgage payments thereafter, she did not pay a debt of \$4,500.00 (debt #2) owed to the mortgage company which had handled the realty transfer (SOR subparagraph 1.b.). She stopped payment on a credit card account with a balance of \$461.28 (debt #3), which she had opened in February 1997 (SOR subparagraph 1.a.). On April 29, 1997, the creditor notified Applicant her credit privileges had been suspended as her account balance was \$61.28 over her \$400.00 limit. Applicant did not respond to the creditor's request to bring her account balance under her credit line. The account was charged off and placed for collection. Due to interest, the balance as of August 1998 had reached \$901.00.

After only six months at company B, Applicant was laid off in June 1997. For the next six months, she collected unemployment compensation. She stopped making payments on a \$6,838.00 credit card debt, which stemmed from her purchase in the 1995/96 time frame of a refrigerator, washer and dryer and some furniture for their residence. The account was charged off and placed for collection with \$6,838.00 owed. (SOR subparagraph 1.c.; debt #4).

Sometime in 1997, Applicant's daughter, then twelve-years-old, stole \$1,300.00 from her. Applicant and her spouse took their daughter to court, and their daughter was placed on probation. It is unclear to what extent their daughter's actions compromised the family's finances.

In January 1998, Applicant commenced employment for a temporary agency, and was assigned to work at the defense contractor. In June 1998, Applicant became a full-time employee for the defense firm. With Applicant and her spouse both gainfully employed, no effort was made to pay the delinquent credit card balances of \$901.00 and \$6,828.00, the \$4,500.00 mortgage debt, or the \$558.00 owed the college. As no demands were being made by the college for repayment, Applicant forgot about that debt. During the 1997/98 time frame, Applicant received several requests for repayment of the mortgage debt, which she ignored.

In December 1998, Applicant took out an installment loan of \$17,949.00 for an automobile, with terms of payment of \$340.00 per month for 62 months. Applicant was timely in her payments, paying off the balance by May 2001.

Needing a security clearance for her duties with the defense contractor, Applicant executed on May 19, 1999, a security clearance application (SF 86). In response to whether she had been over 180 days delinquent on any debts in the last seven years, Applicant listed debt #3 (reported by her as \$461.00) and the unpaid balance owed the mortgage company (debt #2). Applicant responded "No" to whether she was currently over 90 days delinquent on any debts. On August 7, 1999, Applicant was issued an interim secret security clearance.

In December 1999, debt #3 was transferred to another collection agency. The new collection agency on December 10, 1999, requested payment of \$983.38, the balance owed due to interest. Applicant was notified the debt would be presumed valid unless she notified them within thirty days that she disputed the validity of the debt or any portion thereof. Applicant did not respond to the letter. On February 12, 2000, the collection agent asked Applicant to provide a monthly amount which she could afford to repay or to furnish the reason(s) why she had not resolved the debt. She was informed that failure to reply within seven days would lead to additional collection of the \$994.65 balance. Applicant's spouse notified the collection agent telephonically that they disputed the balance. The collection agency agreed to reduce the balance owed to \$700.00. Of the opinion the balance was still too high in relation to the original debt, Applicant's spouse declined the offer.

On February 24, 2000, Applicant was interviewed by a special agent of the Defense Security Service (DSS) about her financial difficulties. Applicant explained she became late on payments when she was laid off in 1991, and because of her spouse's medical problems in 1997. She indicated she was required to pay \$460.00 per month for six months for insurance coverage, ⁽¹⁾ and when her new insurance became effective, it would not pay for her husband's preexisting condition. Applicant claimed creditors often confused her for another debtor, due to her common name. ⁽²⁾ Applicant admitted incurring \$461.00 in unsatisfied debt on a credit card account (debt #3), but disputed the balance being demanded by the collection agency for that account. She maintained her efforts to resolve the issue had been thwarted by the collection agency until two weeks ago, when the collection agency agreed to decrease the bill by \$200.00. Of the opinion they did not owe that amount of money, Applicant's spouse rejected the offer. Applicant acknowledged owing more than \$2,800.00 on another credit card, which she was unable to pay. Applicant also did not dispute debt #4, indicating she had decided not to pay for the appliances when she had trouble getting them serviced ("I figure that if I can't get the service, I shouldn't give the money. This store is now out of business, and we have not been contacted by any creditors about it."). Asked about a \$288.00 balance owed a local bank (SOR subparagraph 1.f.; debt #5), Applicant expressed her belief the amount was due to the bank's payment on an outstanding check some six months after she had closed her account. She related no intent to pay that debt as it should not have been cashed. During her interview, Applicant completed a Personal Financial Statement on which she reported a monthly net remainder of \$47.10, which did not include payments on any delinquent accounts.

A check of Applicant's credit on or about April 25, 2000, revealed Applicant owed a local hospital \$11.00 for a debt placed for collection in January 2000, in addition to \$558.00 on debt #1, \$955.00 on debt #3, and \$6,838.00 on debt #4. The credit card debt, which she thought was \$2,800.00 but had reached \$3,152.00, was listed as having a zero balance following purchase by another lender. ⁽³⁾ A debt of \$288.00 owed a local bank was reported as having been paid by collection.

In April 2000, Applicant took out an automobile lease of \$11,829.00 with terms of repayment at \$328.00 per month. She traded in two older model vehicles in lieu of a monetary down payment.

Applicant did not pay the \$11.00 collection debt owed to the local hospital. In August 2000, the hospital placed for collection a \$50.00 debt incurred in February 2000. In October 2000, Applicant brought her daughter to the emergency department of the hospital on four separate days for treatment of appendicitis. Of the opinion her medical insurer should pay the \$50.00 copay for the three days preceding her daughter's operation, Applicant did not pay the copay charges, and in February 2001, the hospital placed three accounts of \$50.00 each for collection, bringing her total balance owed the hospital to \$211.00 (SOR subparagraph 1.d.; debt #6).

On January 4, 2001, Applicant was reinterviewed about her debts. She acknowledged the hospital had placed a \$11.00 debt for collection, which she intended to pay within thirty days. As for debt #1, Applicant explained she took a college course with the intent of asking her employer to pay for it, but that she left the company. She indicated she lacked the funds to satisfy debt #1. Regarding the \$955.00 listed as owed debt #3, Applicant told the DSS agent she had spoken to the collection agent again in Fall 2000 and was still in negotiations. On March 12, 2001, Applicant was asked why she had listed only debts #2 and #3 on her SF 86. She maintained she had been unaware of some of the debts until her earlier DSS interview, and had forgotten about debt #1 owed to the college.

Sometime in January 2001, Applicant's spouse was laid off from his job. That same month, a family services provider placed a \$110.00 delinquent balance for collection, which had been owed since August 2000. With her husband on unemployment, Applicant in March 2001 leased another vehicle, taking on monthly payments of \$336.00. She traded in a two or three-year-old Chevrolet.⁽⁴⁾ In June 2001, a \$57.00 radiology debt (SOR subparagraph 1.c.; debt #7), owed since January 2001, was placed for collection due to nonpayment. A credit report of October 16, 2001, disclosed Applicant was making her monthly car payments of \$328.00 and \$336.00, but she had not paid the debts in collection or those delinquencies not actively pursued (the \$6,838.00 credit card debt, the \$558.00 college debt or the \$4,500.00 mortgage debt).⁽⁵⁾

In November 2001, Applicant indicated to DOHA she "refused to be pushed around for bad credit reasons." Citing her spouse's unemployment "for most of this year," she indicated she was doing the best that she could to get her financial affairs in order. On January 30, 2002, DOHA issued an SOR to Applicant based on unresolved delinquencies totaling \$13,270.00. Circa April/May 2002, Applicant was transferred to the stockroom at work because her interim secret clearance had been withdrawn. Primarily due to a loss of overtime, her monthly income has decreased between \$300.00 and \$400.00.

In mid-July 2002, Applicant's spouse was in an automobile accident. While insurance paid for the damages to the vehicle, her spouse was out of work for eight weeks with no income. Applicant and her spouse managed to remain current in their daily living expenses by taking money from their daughter's savings and asking their twenty-year-old son to pay a greater share of the household expenses.

Sometime in the 2001/02 time frame, Applicant and her spouse took possession of a camper purchased by a friend for \$11,500.00. Applicant and her spouse are obligated to repay this friend when they have the funds to do so.

As of September 2002, Applicant's spouse was employed as a van driver for a car rental company. Her twenty-year-old son was contributing to the household expenses from wages earned as a chef at a country club. Her seventeen-year-old daughter works on weekends at a grocery store and for a discount retailer. With her son taking over responsibility for a couple of the family's bills, Applicant and her spouse were just about breaking even each month after payment of expenses. Lacking the funds to pay her old delinquencies, Applicant had made no effort to contact the college regarding her \$558.00 debt. With the retailer to whom Applicant owes \$6,838.00 no longer in business, Applicant was uncertain as to whom to contact regarding that debt. Unable to find a telephone number for the mortgage company owed \$4,500.00, Applicant made no effort to write to the company at its last known address, since no effort was being taken by the creditor to collect the balance. In dispute of the balance sought by the collection agent for debt #3, Applicant was hopeful the bill would be lowered so she could pay it off. As for the \$57.00 radiology debt, Applicant planned to pay the debt but had not done so. Applicant contacted the local hospital by telephone and requested an exact accounting of the debt balance owed that creditor.

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).

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 her 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 she 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, I conclude the following

with respect to guideline F:

As of September 2002, Applicant had not paid some \$13,212.22 in delinquent debt owed six creditors. Applicant contends she remains liable for only \$298.00, the debts placed in collection by the local hospital and a radiologist over the 2000/01 time frame, as most of her debt is no longer collectable under the state's statute of limitations. Applicant cites no specific provision of law or regulation to support her position. It is noted the collection agent for debt #3 contacted Applicant in December 1999 and February 2000 in attempts to collect on that debt, which with interest has reached at least \$994.65. Applicant testified that a couple of months before the hearing, she was contacted by an employee of the collection agency about the debt. Moreover, even if state law bars the collection of those debts not actively pursued, such as the \$558.00 owed the college and the \$4,500.00 owed the mortgage company, Applicant's financial history is relevant in determining whether she presents a security risk. While the creditor from whom Applicant purchased the appliances is no longer in business, Applicant enjoyed these appliances without paying for them. Applicant indicated in April 2000 she stopped payment toward the \$6,838.00 credit card debt when she had problems obtaining services under extended warranties. At her hearing, she testified she took the washer/dryer with her when she moved to her current residence in 1997 (Tr. p. 64). She presented no proof of requests for service to the retailer which went unheeded. Disqualifying conditions E2.A6.1.2.1., a history of not meeting financial obligations, and E2.A6.1.2.3., inability or unwillingness to satisfy debts, apply in this case.

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 counseling 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.). Applicant's failure to make timely payments on debts #2, #3, and #4 coincided with her spouse's aneurysm, which put him out of work for a couple of months, and her layoff in June 1997. In early 1998, Applicant commenced employment for a temporary agency. The lack of permanency during her six months as a temporary worker credibly explains her failure to attend to these debts during the first half of 1998. However, in June 1998, Applicant became a full-time employee of the defense contractor. There is no evidence she made any payments on her delinquent accounts thereafter. Instead, in December 1998, she took on a monthly car payment of \$340.00 for 62 months. In December 1999, Applicant was notified by the collection agent for debt #3 that the balance of her debt had reached \$983.38. Applicant did not respond to this attempt to collect a debt, which led to the creditor's notification of February 2000 to dispute the debt in writing. This letter prompted a telephone contact from Applicant and her spouse during which the collection agent offered to settle for \$200.00 less. Applicant and her spouse declined the offer as the amount was still greater than they thought they owed. Applicant's dispute over the interest charges is not persuasive, as her nonpayment toward the debt is the direct cause of the doubling of the original obligation.

During her DSS interview of January 2001, Applicant expressed an intent to repay the \$11.00 collection debt owed a local hospital. Not only did she not pay that very minor amount within thirty days, she neglected other accounts with the hospital incurred in October 2000. In November 2001, Applicant informed DOHA her spouse had been out of work for most of the year.⁽⁶⁾ While her spouse was collecting unemployment compensation, Applicant in March 2001 traded in a two or three-year-old vehicle and took on car payments of \$336.00 per month for three years. The incurring of new financial obligations, when her spouse was unemployed and longstanding delinquencies had not been paid, raises serious questions about her financial judgment. In June 2001, a radiologist placed a \$57.00 debt for collection.

With the issuance of the SOR, Applicant was notified by the Department of Defense her unresolved debts raised significant security concerns. There are no extenuating circumstances of record in Spring 2002 which prevented her from making a good faith effort to reach agreements with her creditors. With the decrease in her earnings following her job transfer in April or May 2002, and her spouse being out of work for eight weeks following an automobile accident in July 2002, Applicant's financial situation was negatively impacted by circumstances outside of her control in the summer. To her credit, Applicant managed to remain current in her mortgage and living expenses with the help of her son. However, by her hearing in September 2002, Applicant's spouse had secured employment with a car rental company. With this additional income, Applicant and her spouse are obligated to pay for a camper in their possession which had been purchased by a friend for \$11,500.00. Their taking on of new debt for a discretionary item such as a camper cannot reasonably be justified where she has accounts in collection. Applicant has taken little initiative toward

resolving her delinquencies apart from asking the hospital for an accounting. With no financial counseling and little change in her financial behavior, I am unable to conclude at this time that it is clearly consistent with the national interest to grant her a security clearance. Subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., and 1.g., (7) are resolved against her.

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: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Withdrawn

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.

Elizabeth M. Matchinski

Administrative Judge

1. At the hearing, Applicant testified she paid in February 1997 for January and February of that year, with a last payment under COBRA in April 1997. After ninety days, she was covered by her new employer, bringing her medical insurance payments down to \$30.00 per week. (Tr. p. 55).
2. Applicant presented no evidence proving any of the debts on the SOR were incurred by another person with the same name.
3. This debt was not alleged in the SOR, presumably because a more recent credit report of October 2001 does not include the debt.
4. When asked why she traded in a relatively new model vehicle in 2001, Applicant testified it was to lower her monthly car payment, and because the car had trouble with the front end. (Tr. p. 65). The credit report of October 2001 indicates an automobile loan taken out in December 1998 was repaid at the rate of \$340.00 per month. Assuming this loan was for the car she traded in as down payment on the lease, her new car payment was only \$4.00 less per month, so even with repair costs to the older car's front end, it is difficult to believe that it was cost-effective to lease a new car.
5. Applicant testified a lawyer for the former retail company called them about a year ago. She claimed there was some confusion as to whether they owed \$6,838.00. (Tr. p. 38). The credit reports of April 2000 and October 2001 both reflect the outstanding balance of \$6,838.00, and Applicant presented no documentary evidence proving otherwise.
6. There is some discrepancy in the record as to how long her spouse was unemployed in 2001. Applicant wrote a letter

to DOHA on November 12, 2001, in which she stated, "My husband has been out of work for most of this year. . .; My husband is a disabled veteran who is willing to work but hasn't been hired." (Ex. 2). At the hearing, she testified her spouse was laid off from his job as a cook in January 2001, was on six months unemployment compensation thereafter, and it was another two months before he found a position. (Tr. p. 52). Her testimony places him back to work in about August 2001, which contradicts her letter of November 2001.

7. Subparagraph 1.f. is resolved in Applicant's favor as the Government failed to prove Applicant owed the creditor as alleged.