

DATE: December 16, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-12079

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is indebted in the aggregate amount of approximately \$16,500.00 on three accounts, two of which became delinquent during 1994/95 when Applicant was out of work for eighteen months following an injury. Intending to pay back these debts once he earned his undergraduate degree, Applicant commenced efforts to resolve these debts in May 2002 when it became clear to him they presented a security concern. Given his record of responsible handling of his other financial obligations, to include child support and student loans, he is likely to continue to make good faith efforts to resolve this outstanding debt. Clearance is granted.

STATEMENT OF 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 May 10, 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) related to unresolved financial delinquencies totaling \$16,440.50.

On June 6, 2002, Applicant 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 August 14, 2002, and pursuant to formal notice dated August 23, 2002, a hearing was scheduled for September 10, 2002. At the hearing, which was held as scheduled, the Government submitted six documentary exhibits, which were entered without any objection. Applicant's case consisted of eight exhibits and his testimony. A transcript of the proceedings was received on September 20, 2002.

The record was held open until September 25, 2002, to allow Applicant to submit additional documentation of efforts to

resolve his outstanding indebtedness. On September 24, 2002, Applicant timely forwarded for consideration four documents and requested an extension of time to submit additional records. Department Counsel was granted until October 4, 2002, to file any objections to the documents or Applicant's request for extension. The Government filing no objection to their admission, the documents were entered as exhibits (I, J, K and L), and Applicant was granted an extension until October 11, 2002. On October 10, 2002, Applicant submitted a report of his contacts with creditors (Ex. M), correspondence from a dentist (Ex. N), a recent bank statement dated October 8, 2002 (Ex. O), a certified mail receipt dated October 4, 2002 (Ex. P) and a copy of Applicant's application for admission to an undergraduate degree program (Ex. Q). There being no objections to my consideration of these documents, they were entered into the record.

FINDINGS OF FACT

In his answer to the SOR, Applicant admitted the outstanding indebtedness alleged in subparagraphs 1.a. (\$4,137.00 in delinquent credit card debt) and 1.d. (\$11,904.50 to an agency assigned to collect two delinquent credit card debts). Applicant admitted a past debt of \$191.00 to an oil company (subparagraph 1.b.), which has been satisfied. He denied a \$208.00 debt to a dentist (subparagraph 1.c.). After a thorough review of the evidence, and on due consideration of the same, I render the following findings of fact:

Applicant is a 34-year-old office assistant, who has been employed in the mail room of a defense contractor since late June 2000. Applicant seeks a secret security clearance for his duties.

Since 1990, Applicant has worked in a variety of jobs, including as a warehouse worker, a maintenance worker for a motor inn, a driver, a mail clerk, a business developer, a contractor for an employment staffing company, a technical support worker, and an office assistant.

While working as a driver, Applicant suffered an injury on the job in late December 1993 which led to him being out of work for eighteen months. With workmen compensation benefits of \$180.00 per week, Applicant had difficulty meeting his financial obligations and he ran up credit card charges, thinking he would be receiving a large financial settlement. In September 1994, Applicant sought legal counsel with respect to a possible bankruptcy filing. Intending to file for bankruptcy, Applicant made no effort to pay his outstanding debts. A credit card account with an oil company, opened in September 1992, was written off to profit and loss in about May 1995 with \$100.00 owed (debt #1; SOR subparagraph 1.b.). A revolving Discover charge account, opened in October 1991, became \$2,023.00 past due and was charged off with a balance owed of \$2,668.00 (debt #2; SOR subparagraph 1.d.). A MasterCard credit card account, opened by Applicant in September 1993, was charged off in March 1995 with an outstanding balance of \$7,774.77 (debt #3; SOR subparagraph 1.d.). Lacking the \$800.00 fee for the bankruptcy filing, Applicant relocated in May 1995 to a distant state without filing. While Applicant received \$5,000.00 in settlement of his injury sometime in 1995, he used the funds to pay back rent.

In May 1996, Applicant moved back to his home state, where he signed on as a temporary worker with a temp agency. Applicant and his then girlfriend financed the purchase of an automobile, taking out a loan of \$9,999.00, with terms of repayment at \$300.00 per month. After their relationship ended, Applicant stopped paying on the loan and the automobile was repossessed in September 1997. The unpaid balance of \$4,137.00 (debt #4; SOR subparagraph 1.a.) was charged off in October 1997 by the creditor. Applicant thought he had no further obligation on the car following the repossession, a misconception reinforced when he heard nothing further from the creditor.

In May 1997, Applicant enrolled in a local college in pursuit of an associate degree in business, taking out a federal direct student loan of \$930.00 with terms of repayment at \$50.00 per month. Between July 1997 and May 1998, he obtained four separate student loans through a student loan company (lender X) totaling \$5,825.00 at 8.25 percent interest. Monthly repayment terms ranged from \$9.00 to \$23.00. In September 1998, he took out two more loans, in the amounts of \$498.00 and \$1,102.00.

In February 1998, Applicant began to have dental problems, requiring root canal treatment on two teeth (SOR subparagraph 1.c.). Unable to perform a root canal on one of the teeth because it was infected, a local dentist (dentist Y) prescribed an antibiotic and told Applicant to return once the infection had drained. On March 6, 1998, Applicant issued a check in the amount of \$185.00 to the dentist, which was returned for insufficient funds. The dentist billed Applicant's insurer for root canal therapy on February 27, 1998, and crown build-up on March 6, 1998. Applicant was unable to

obtain a follow-up appointment within ninety days. In April 1998, the insurer paid the provider on submitted fees for crown preparation and root canal treatment on two teeth. Aware the insurance company had paid for dental work which had not been performed, Applicant did not notify the insurance company as he changed employers in May 1998, and did not want the aggravation. Under the care of a different dental professional, Applicant in August 1999 underwent root canal therapy on the tooth which had been infected. Applicant paid \$318.00 out-of-pocket for the procedure.

In July 1999, Applicant's delinquent Discover card and MasterCard accounts were referred for collection in the amounts of \$3,078.00 and \$7,774.77, respectively. The collection agent (collection agent Z) commenced collection of the MasterCard debt in September 1999, by dunning letter offering to settle for 80% of the balance. Applicant did not receive the letter, as it was sent to the wrong address.

In late June 2000, Applicant went to work for a defense contractor in the firm's mail room. Needing a security clearance for his employ, Applicant executed a security clearance application (SF 86) on August 4, 2000. Aware that his Discover and MasterCard accounts had been charged off, Applicant responded "No" to questions 38 ["In the last 7 years, have you been over 180 days delinquent on any debt(s)?" and 39 ["Are you currently over 90 days delinquent on any debt(s)?"]. As the debts were incurred so long ago, he did not consider them to be current problems.

On September 6, 2000, the Defense Security Service (DSS) ran a check of Applicant's credit which revealed bad debts #1, #2, #3, and #4, as well as a \$208.00 overdue balance reportedly owed dentist Y for services performed in February 1998. ⁽¹⁾ Applicant was current on his student loans, although his student loan accounts were rated as slow pay. The aggregate balance on his student loan accounts was reported to be \$6,858.00.

In late October 2000, collection agent Z renewed collection efforts on debt #3, offering to settle that debt for 80 percent of the balance. Applicant contacted the creditor, claiming the debt was not subject to collection due to the passage of time. On several occasions in 2001, the collection agent extended settlement offers to applicant, agreeing to accept a progressively lower percentage of the balance as the year went on and Applicant failed to respond.

Circa November 2000, Applicant fell behind in his student loan payments as he had to pay for dental work. At Applicant's request, student loan lender X granted Applicant a forbearance to June 2001. He worked overtime to catch up on his federal student loan.

On March 9, 2001, Applicant was interviewed by a DSS special agent about the bad debts listed on his credit report. Applicant acknowledged the \$4,137.00 balance of debt #4, but indicated that he had not been advised by the creditor of any outstanding balance after he surrendered the car. Applicant also did not dispute debts #1 or #2, and attributed the delinquencies to his on-the-job injury and being out of work thereafter. Asked why he had not listed the charged off balances on his SF 86, Applicant responded he did not consider them to be current problems. ⁽²⁾ With regard to the \$208.00 dental debt reportedly owed dentist Y, Applicant indicated the services were not performed. Applicant claimed to have no knowledge of the two accounts listed as in collection with collection agent Z. He admitted he had fallen three to four months behind in his student loan payments, as he needed dental work in November 2000. He indicated student loan lender X had granted him a forbearance to June 25, 2001. As for his federal student loan, Applicant indicated he had brought the account current through overtime earnings and he was paying \$50.00 per month on that loan. Applicant expressed his intent to not pay any of the consumer credit accounts already charged off as he planned to pursue bankruptcy. He intended to pay off his student loan debts in full. Applicant volunteered he was providing child support for a son. During his interview, Applicant completed a personal financial statement on which he reported a net monthly remainder of \$359.00 based on his recent pay, which included overtime income of \$542.00. On average, he had about \$100.00 in discretionary funds available to him each month. After his DSS interview, Applicant did not have the impression that his outstanding debt posed a problem for the Department of Defense.

Applicant sought legal counsel with regard to a bankruptcy filing to relieve himself of legal liability for his old debts. Advised he could not choose his creditors in bankruptcy, Applicant decided not to pursue bankruptcy as he had established good credit with other creditors. He planned to satisfy his debts after he obtained his bachelor's degree.

In May 2001, Applicant financed the purchase of an economy car, taking out an automobile loan of \$12,066.00 with terms of repayment at \$301.00 per month. After his deferment of his student loan expired, Applicant in July 2001 made

a payment of \$82.99. He again requested forbearance, and his student loans were deferred through December 1, 2002.

In November 2001, a credit check revealed Applicant's federal student loan was current with a balance of \$145.00, but he had made no payments on his undisputed delinquent debts #1, #2, #3 and #4.

Having earned his associates degree, in January 2002 Applicant returned to school part-time in pursuit of his bachelor's degree. The cost of his education is covered by his employer. On January 23, 2002, collection agent Z offered to settle debt #3 for 45 percent of the balance, which had reached \$8,616.69. Applicant did not respond to the offer. In March or April 2002, Applicant attempted to secure a consolidation loan to repay his debts. Lenders were not willing to grant him a loan after learning he did not own a home.

On May 10, 2002, DOHA issued an SOR to Applicant based on his failure to satisfy debts #1, #2, #3, #4, and \$208.00 to dentist Y. Clearly aware his outstanding indebtedness posed a security concern for the Department of Defense, Applicant on May 31, 2002, satisfied debt #1. He also sought advice from a consumer credit counselor, notifying the counselor on June 2, 2002 that collection agent Z had offered to settle for \$3,500.00, which he could repay at \$35.00 per month. Applicant also indicated he could afford payments of \$15.00 to \$20.00 per month on debt #4. The credit counselor told Applicant to send his creditors the monthly payments even if the creditors rejected his proposed payment plan, but to be sure to carefully document his payments. ⁽³⁾

By letter dated June 23, 2002, collection agent Z offered to settle debt #3 (with a balance of \$8,616.69) for \$3,446.68, provided Applicant pay that amount by July 14, 2002. Unable to make the lump sum payment, ⁽⁴⁾ Applicant sent the collection agent \$50.00 on September 3, 2002, via certified mail to the collection agent's local office. The letter was returned as undeliverable. Applicant sent a payment of \$50.00 to corporate headquarters, which was received on October 4, 2002.

In August 2002, Applicant contacted the auto lender asking for the balance owed after repossession of his car in 1995. In response, the creditor referred Applicant to a collection agent, who agreed to accept an initial \$403.00 payment followed by \$100.00 monthly payments toward the balance, which with interest had grown to \$4,679.08. Two days after Applicant made a telephone transfer of \$403.00, the collection agent extended a written offer of settlement demanding an initial payment of \$467.90 and \$150.00 per month thereafter. Prior to Applicant receiving this settlement offer, he contacted the collection agent and was informed his \$403.00 payment had been rejected as the original creditor had taken back the account. The original creditor demanded payments of \$379.00 per month, reduced to \$360.00 after negotiations. Unable to make that amount, Applicant elected to send them \$100.00 each month. He made his first payment on September 9, 2002.

As of September 2002, Applicant was enrolled on a part-time basis at a state university, pursuing through the division of continuing education his bachelor's degree in operations management. He had satisfied his federal direct student loan and was scheduled in December 2002 to resume repayment at \$82.99 per month of his other student loans, totaling \$6,768.47. Applicant had yet to make any arrangements toward repayment of debt #2 on which he owes approximately \$3,287.81. ⁽⁵⁾ On October 8, 2002, Applicant was notified he did not owe the \$208.00 to dentist Y.

Applicant has three active current credit card accounts on which he had an outstanding total balance of \$1,100.00 as of September 10, 2002. After payment each month of rent, living expenses, a voluntary child support payment of \$280.00 for his twelve-year-old son, \$105.00 on current credit cards, \$100.00 on debt #4 and \$50.00 to collection agent Z on debt #3, Applicant estimated a monthly net remainder of \$1,556.39. Acknowledging and apologizing for his procrastination in handling his debts, Applicant intends to continue to pay \$100.00 per month on debt #4 and \$50.00 per month on debt #3.

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

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 the Applicant, I conclude the following with respect to guideline F:

Applicant fell behind in his financial obligations in 1994 when he was out of work for eighteen months due to an injury. At least three credit card accounts became seriously delinquent and were charged off in 1995 in the aggregate amount of \$10,5442.77. As those debts continued to accrue interest, Applicant and a girlfriend financed the purchase of an automobile in 1996, on which he made payments until their relationship ended. Following the repossession of the vehicle in September 1997, Applicant owed \$4,137.00 on his car loan, which was charged off the following month. Inasmuch as the debts had been charged off, Applicant made no effort to pay them, even after he had secured full-time employment with a defense contractor in June 2000. As recently as March 2001, he planned to pursue bankruptcy. After learning he could not exclude newer accounts on which he had established good credit, Applicant elected not to file for bankruptcy, and to postpone satisfying these old accounts until after he completed his undergraduate studies. In 2001 alone, Applicant ignored seven settlement offers from collection agent Z, at a time when his student loan obligations with lender X were in deferred status. As of January 2002, his delinquent debt had accrued to \$16,232.50. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Under guideline F, financial considerations, 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, are pertinent to an evaluation of Applicant's security suitability.

Under the Directive, security significant financial considerations are potentially mitigated 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 has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (E2.A6.1.3.6.). During the entire year of 1994 and for the first half of 1995, Applicant was out of work due to an injury. With his income limited, Applicant fell behind in several accounts, including on his oil company credit card, Discover card and MasterCard accounts. This unforeseen extenuating circumstance serves to extenuate his delinquency as to those debts, but it does not mitigate his failure to address these outstanding debts once he secured gainful employment. With respect to debt #4, the evidence reflects Applicant simply stopped payment on the car in 1997 after his relationship with his girlfriend ended. Applicant's decision to wait to resolve his debts until after he had finished his degree (when he would presumably be in better position financially to address these debts) was clearly a matter within his control.

To Applicant's credit, once he realized the delinquencies raised security concerns, he commenced efforts to resolve these debts. In late May 2002, he sought the informal assistance of a consumer credit counselor. He paid off debt #1, and contacted the collection agent for debts #2 and #3, and the creditor owed debt #4. With a \$1,058.00 college tuition payment on June 3, 2002, Applicant was unable to afford the lump sum payment of \$3,446.68 requested in settlement of debt #3. On the advice of the consumer credit counselor, Applicant made a payment of \$50.00 on debt #3 and a \$403.00 payment on debt #4. Indicative of his good faith effort to resolve his outstanding debts, Applicant sent another \$50.00 payment to collection agent Z's corporate headquarters when the first payment was returned by the postal service. After creditor #4 proved unwilling to work with him, Applicant sent the creditor \$100.00 anyway.

Although the Government's concerns about the recency of these efforts are legitimate, Applicant's handling of his other financial matters leads me to conclude that he will continue to make payments toward his outstanding debts. Unrebutted by the Government, Applicant has made child support payments consistently for several years because he loves his son. He is not under any court order to do so. Likewise, he has handled his student loans responsibly, paying them when they were not deferred. When they fell behind due to unexpected dental expenses in 2000, he brought them current. As of September 2002, he had satisfied his federal student loan. Similarly, there is no record of Applicant failing to pay his rent or utility expenses. Rather, he lives within his means, renting a two-bedroom apartment for \$305.00 per month. While he purchased an automobile in May 2001, it was an economy car and he has been current in his payments. The amount of his outstanding debt is significant, but Applicant's income is sufficient to meet his expenses as well as monthly payments on his outstanding delinquencies. His desire to keep his employment provides motivation for continued efforts toward resolution. The debts were incurred during an isolated time frame and Applicant accepts responsibility for failing to address them before spring 2002. E2.A6.1.3.6. applies in mitigation of subparagraphs 1.a.,

1.b., and 1.d. of the SOR. Subparagraph 1.c. is found for Applicant as it was not established that it was a valid debt.

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.: 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.

Elizabeth M. Matchinski

Administrative Judge

1. Listed in the credit report was a bad debt in the amount of \$8,733.00 on a charged off credit card transferred to another lender. This debt was not alleged by the Government. The high credit on the account, \$7,700.00, is close to the transfer balance of debt #3 (\$7,774.77) when the latter was placed for collection in July 1999. Applicant indicated to the DSS agent in March 2001 that he did not recognize the account which had a reported balance of \$8,733.00, but he did not dispute debt #3. They may well be the same account. In any event, there is insufficient information of record to find Applicant owes an additional \$8,733.00 in debt.
2. Applicant testified he had not heard from the original creditors owed debts #2 and #3 in a long time. The collection agency's records indicate that on October 27, 2000, "DBTR CLLD IN-SPK/W/CLLCTR." If the collection agent's records are correct, Applicant spoke with an employee about four months before his interview with the DSS agent.
3. Applicant had not entered into any formal arrangement with a consumer credit counseling service to pay off his debts.
4. Exhibit C reflects Applicant made a \$1,058.00 payment to a college on June 3, 2002. Applicant testified his employer is paying for his college studies. Whether or not he would be reimbursed for these costs, the financial outlay of such a sum in June 2002 did not permit him to accept collection agency Z's settlement offer.
5. Applicant was under the impression at the hearing that the collection agent agreed to accept \$3,466.68 in settlement of his total balance owed on debts #2 and #3 (Tr. p. 39). The settlement offer extended in June 2002 was only on debt #3 (*see* Ex. B).