

DATE: August 7, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-22139

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Jonathan A. Beyer, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant owed \$17,000.00 to seven creditors, but has paid \$8,400.00 to his creditors, leaving a balance owed of \$8,700.00. He has made an arrangement to pay the largest of the three remaining debts, which totals \$8,300.00. He has begun to pay down the other two debts totaling \$400.00 and intends to pay in full. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from a debt of such magnitude. Clearance is granted.

STATEMENT OF THE CASE

On January 16, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating that DOHA could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(U\)](#) On February 10, 2003, the Applicant answered the SOR and requested a hearing. The case was assigned to me on March 19, 2003. A Notice of Hearing was issued on arch 27, 2003, scheduling the hearing, which was held on April 10, 2003.

The Government's case consisted of five exhibits (Gov Ex). The Applicant relied on his own testimony and two exhibits (App Ex). Following the hearing, one additional document was received, provisions having been made for its submission following the hearing. Department Counsel (DC) having no objection to its admission, the submission was admitted as Applicant's exhibit C. The transcript (Tr.) of the hearing was received on April 18, 2003.

FINDINGS OF FACT

The SOR alleges financial considerations (Guideline F). The statement of reasons (SOR) alleges the Applicant owed approximately \$29,000.00 on nine debts. He admits six of the debts and denies the other three. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact.

The Applicant is 39-years-old, has worked for a defense contractor since August 1994, and is seeking to maintain a security clearance. The Applicant's financial difficulties started in 1993/1994 when he was laid off and had to accept lower paying jobs. He also separated from his wife and incurred additional expenses when she moved to a new location. (Gov Ex 2) The Applicant has a 401(k) retirement program of approximately \$2,200.00.

The Applicant owed \$193.00 on a delinquent long distance telephone bill. Following the hearing he made a money order payment of \$100.00, leaving a balance of \$93.00. (App Ex C) He intends to pay this debt. He owed approximately \$49.00 for a satellite TV dish. Following the hearing, he paid this account in full by money order. His August 2002 credit report (Gov Ex 5) indicated he owed \$100.00 on a gemstone account. In October 2002, he made a \$25.00 payment and following the hearing, he made a money order payment on this account, which pays this account in full.

The August 2002 credit report indicated he owed a recovery service \$425.00. In October 2002, he made a \$40.00 payment and following the hearing he made a \$100.00 payment, which leaves a balance of \$285.00.

The Applicant owed approximately \$8,000.00 on a student loan, which included a judgment of \$4,270.00. In March 1998, the Applicant established a monthly garnishment of \$204.00 to pay this debt. (Gov Ex 3) As of September 2001, this debt has been paid in full. (App Ex B.)

In June 1999, the Applicant appeared and agreed to the entry of an order on a motion to reduce to judgment and modify child support. The Applicant agreed to make \$520.00 monthly child support payments and established an automatic monthly deduction to pay this obligation. (App Ex A, Gov Ex 4) He has never been late on his child support payments.

In September 2000, the Applicant said he did not intend to pay a financial service approximately \$7,625.00, because he believes the company cheated him. (Gov Ex 2) He purchased an 1989 automobile for \$7,000.00. The car had numerous mechanical problems and he returned it to the dealership in 1995. The car was sold for \$850.00, leaving a balance of \$6,712.00, which has now increased to the current amount of \$8,431.00. The Applicant has entered into an agreement with this creditor and he is making \$75.00 monthly payments to satisfy this debt. (Tr. 27)

The Applicant's August 2002 credit report indicates in June 1995 the Applicant opened a 28-month installment account with a finance company. The credit limit or original amount was \$7,625.00 and the high balance is listed as "NA." Monthly payment was zero. The recent balance/recent payment is "NA." Status of the account is listed as paid, but was once 60 days past due, which is also reflected in the account history. The account was last updated as of October 1997, at which time it was 60 days past due. The Applicant denies owing this debt. (SOR answer, Tr. 21) He has no knowledge about this debt. (Tr. 36) The Applicant stated, "I can't say I can satisfy that one because I do not have any knowledge of it." (Tr. 54)

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

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

Financial Considerations (Guideline F) 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.

Conditions that could raise a security concern and may be disqualifying include:

1. A history of not meeting financial obligations. (E2.A6.1.2.1.)
3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

Conditions that could mitigate security concerns include:

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

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* 484 U.S. at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F, Financial Consideration. Under Guideline F, an Appellant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent substantial evidence of extenuating or mitigating circumstances, an appellant with a history of serious or recurring financial difficulties is in a situation of risk that is inconsistent with the holding of a security clearance. Here, the Appellant's history of sporadic payment on his debts provides concern. The Appellant owed approximately \$ 17,000.00, plus child support. Disqualifying Conditions (DC) 1 [\(2\)](#) and 3 [\(3\)](#) apply.

The Applicant has paid all of the debts in full except for three. He has paid approximately \$8,400.00 on these debts leaving a current balance owed of approximately \$8,700.00. His child support obligation remains, but is--and has

always been--current.

The largest of the Applicant's unpaid debts is a \$8,431.00 debt, which resulted from the voluntary repossession of an automobile. Although the Applicant stated in 2000 he was not going to pay this debt because the company cheated him, he has established a repayment plan with this creditor and has started making monthly payments. I find Mitigating Condition 6⁽⁴⁾ applies and find for the Applicant as to SOR subparagraph 1.a.

The Applicant has paid in full his satellite dish debt of \$49.00, the \$100.00 gemstone account, and his \$8,000.00 student loan, which includes the \$4,300.00 judgment. I find for him as to SOR subparagraphs 1.d., 1.f., 1.g. and 1.i. His monthly child-support payment is made by a voluntary garnishment. He has never been late on his monthly payments. I find for him as to SOR subparagraph 1.h.

The Applicant owes \$93.00 on a long-distance telephone bill, which intends to pay. He has recently paid \$100.00 on this account. His recent payment plus his stated intent to pay this debt is sufficient for me to believe he will pay his account in full. I find for him as to SOR subparagraph 1.b. He owes \$285.00 to a recovery service. He has paid \$140.00 on this account and intends to pay it in full. I find for the Applicant as to SOR subparagraph 1.c.

The Applicant denied owing a finance company \$7,625.00. The Applicant's credit report (Gov Ex 5) establishes an installment agreement was opened in June 1995. The account status is listed as "paid," but the account was 60 days past due, at some point. There is no indication the size of the past due amount, if any amount is currently past due, or if any amount is yet owed on the account. Although the credit limit or original amount was \$7,625.00, the recent balance is "NA." The account has not been updated since October 1997. The credit report entry fails to establish a balance is owed on this account. The failure to show an amount is yet owed, coupled with the entry listing the status as "paid," and the Applicant's denial of the debt, I find for the Applicant as to SOR subparagraph 1.e.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

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

Paragraph 1 Guideline F (Financial): FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: 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 the Applicant. Clearance is granted.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.
2. DC 1. A history of not meeting financial obligations. (E2.A6.1.2.1.)
3. DC 3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)
4. MC 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.)