

DATE: June 20, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-25842

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

Thomas Albin, Esq.

SYNOPSIS

Applicant has a history of financial delinquencies from the mid-1990s. While he fell into debt initially due to his spouse's loss of employment, Applicant made financial decisions thereafter which contributed to their financial problems. Credit card accounts opened in Summer 2000 were charged off in 2001 due to nonpayment. By April 2002, he was behind in his mortgage and in his electric bill. He intends to settle his past due accounts, but it is too soon to conclude his financial difficulties are safely of the past. Clearance is denied.

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 January 4, 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 and an admitted inability to make payments on those debts.

On January 19, 2002, 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 March 26, 2002. Pursuant to formal notice dated March 29, 2002, the hearing was scheduled for April 23, 2002. At the hearing, which was held as scheduled, the Government submitted seven documentary exhibits, which were admitted into the record. Counsel for Applicant presented eight exhibits, which were entered without objection, as well as the testimony of the Applicant. [\(1\)](#) The transcript of the hearing was received by DOHA on May 1, 2002.

The record was held open following the hearing for two weeks for Applicant to submit copies in lieu of the originals of

Exhibits F, G and H as well as any additional documentation relative to his financial situation. By letter dated May 2, 2002, received by DOHA on May 6, 2002, Applicant forwarded the copies as well as a new exhibit. Department Counsel having no objection thereto, the document was marked and admitted as Exhibit I.

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 41-year-old painter who has been employed by a defense contractor (company A) since late March 1981. Applicant holds a company granted Confidential security clearance and seeks a clearance upgrade to the Secret level.

In July 1993, Applicant and his spouse purchased their home, taking on a thirty-year mortgage of \$118,200.00 with repayment at \$962.00 per month. Sometime in 1994, Applicant's spouse was laid off from her job as a phlebotomist. She elected to stay home to care for their two children who were both under the age of five, even though they had a lot of debt. Applicant took advantage of overtime opportunities offered by his defense employer. Circa late 1996, Applicant and his spouse fell into financial difficulties due to a reduction in his overtime earnings and increased expenses because of their children. Some three months behind in their mortgage payments, Applicant applied for a HUD program where their monthly payment was reduced by \$600.00 per month for three years, with the \$600.00 underpayment each month accumulating as arrearage. In 1998 or 1999, the account was sold to the current mortgage lender, with an arrearage owed of approximately \$30,000.00. (SOR 1.p.). Applicant was required thereafter to make additional payments of between \$100.00 and \$200.00 per month toward the arrearage.

In about 1997, Applicant and his spouse financed the purchase of a 1996 model year mid-size sedan for her to drive, taking out a loan of \$17,933.00 with terms of repayment at \$298.00 per month.

Circa 1998, Applicant's spouse went back to work 32 to 40 hours per week as a medical assistant for an obstetrician. Also during the 1998 time frame, Applicant enrolled in and completed a correspondence program to become a minister. His spouse completed affiliated study as well to assist him in this endeavor. Applicant's costs for these programs totaled \$1,400.00. By that time, Applicant and his spouse were so far behind in their credit cards and medical bills they stopped making payments on some accounts, electing instead to concentrate on paying their mortgage, monthly living expenses and car payments. As of December 1999, the balance on their mortgage was \$114,560.00, and their account as rated "pays as agreed." Applicant also was current on the installment loan for his spouse's car, as well as on another car loan which they had taken out in 1999 for \$31,655.00 for a van used by Applicant in his ministry. Monthly payments on that vehicle are \$527.00 per month.

Other accounts fell delinquent, with some creditors resorting to collection action and/or garnishments to collect monies owed:

- A revolving charge account with a nationwide retailer, opened in February 1994, became past due in the amount of \$1,284.00. In April 1998, the creditor was awarded a judgment in the amount of \$3,764.98, which was to be paid at the rate of \$35.00 per week. Pursuant to court order issued in July 1998, Applicant's wages were ordered garnisheed at the rate of \$142.42 per week to recover a debt which, with interest, had grown to \$4,297.77. (SOR 1.a.). After the first payment, Applicant petitioned for a lowering of the weekly wage garnishment to \$40.00. The debt was paid off in mid-November 2000.
paid \$325.54 on the judgment debt. In December 1998, Applicant's wages were ordered garnisheed to collect the \$813.65 balance owed on the debt. Applicant's wages were garnisheed over the November 2000/December 2001 time frame to pay off the debt.
- In April 1999, a civil judgment was entered against Applicant in the amount of \$340.00 in favor of a local hospital to recover an unpaid medical debt. (SOR 1.c.). In September 1999, a wage execution was issued by the court, ordering Applicant's employer to take \$25.00 per week from Applicant's wages in repayment of this debt. Applicant's wages were garnisheed from mid-December 2001 to mid-March 2002 to repay the debt, which had reached \$390.41 due to interest charges.
balance. arch 2001, Applicant paid off the taxes for 1999 and 2000. As of April 2002, he owed sewer taxes for 2001. claims judgment was subsequently awarded against Applicant in the amount of \$1,017.37. In late April

2001, the court issued a wage execution ordering the garnishment of Applicant's wages at the rate of \$116.00 per week in repayment of the debt. Since Applicant's pay was already being garnished to pay other debts, wage attachment commenced in late March 2002, at the rate of \$25.00 per week. attempts to collect proved unsuccessful. In November 1997, the creditor sold the account to a company which subsequently filed for bankruptcy. Applicant has made no effort to contact the original creditor, and he remains liable for an outstanding balance which amounted to \$1,282.63 as of January 2001. (SOR 1.h.). debt was unsatisfied as of April 2002. which with interest had accrued to at least \$1,797.78. (SOR 1.j.). collection in August 1999, in the amount of \$315.00. (2) (SOR 1.k.). The account was paid after collection, leaving Applicant with a \$42.00 balance due as of January 2002. pay creditors. In April 1996, the credit union charged off to profit and loss both the credit card and loan accounts, in the amounts of \$475.00 and \$3,210.00, respectively. (SOR 1.l.). Although Applicant has yet to satisfy these accounts, he was able to secure in Fall 2001 a small loan of \$500.00 from the credit union, which he devoted to his mortgage. This new loan is being repaid through automatic payroll deduction at \$11.00 per week. collection by the laboratory in July 1995. Applicant has made no effort to repay the \$217.00 debt as he feels it should have been covered by his insurer. (SOR 1.n.). He plans to resubmit a claim for payment to his medical insurer. residence for her use, incurring in his name some \$300.00 in charges which were charged off to profit and loss in March 1997. (SOR 1.o.). As of April 2002, the debt remained unsatisfied. contacted the timeshare and requested assistance in selling his unit, since he could no longer afford the payments. Circa September 1995, Applicant was notified he owed \$5,544.00, the balance after sale. Applicant has made no payments toward that debt, which has been in collection since November 1995. (SOR 1.q.). payments on the outstanding balance, which has reached \$1,529.00. (SOR 1.r.).

In conjunction with a requested upgrade of his security clearance, Applicant executed on August 23, 1999, a security clearance application (SF 86). In response to inquiries into his financial record, Applicant listed an unpaid judgment of \$330.00 awarded against him in April 1999 and a \$118.00 tax lien levied against him by his municipality for unpaid fire taxes. He listed 23 accounts currently more than ninety days late, with an aggregate indebtedness of \$16,821.00. (3)

A check of Applicant's credit in January 2000 by the Defense Security Service (DSS) confirmed Applicant was paying as agreed on his car loans as well as his mortgage, but eleven accounts were reported as charged off or placed for collection with delinquent balances.

In June 2000, Applicant opened a revolving charge account with a bank which was closed in March 2001, when the past due balance reached \$372.00. As of November 2001, the account had a delinquent balance of \$979.00 and the following month, the account was placed for collection in the amount of \$1,124.00. In July 2000, Applicant opened another revolving charge with a different lender which was charged off in March 2001 with a balance past due of \$514.00. In July 2000, a civil judgment was awarded against him in favor of a local dentist in the amount of \$152.00. (4) These debts remain unsatisfied.

Interviewed about his financial situation on November 16, 2000, Applicant attributed his financial problems to his spouse's layoff in 1994 and a reduction in available overtime in 1996/97. Regarding those credit accounts which Applicant admitted were not being paid, Applicant stated:

Sometimes if I have a little money left over I will make a payment on one of my debts but I don't have a specific plan. I do not have the income available to pay off my debts. I understand that I have a responsibility to pay my debts, however, I am not able to do so. I cannot see any circumstances that would change my ability to pay. My wife is going to school to change careers. Hopefully, when she is through in a couple of years, she will be making more money, and we may be able to pay our debts. I am not making any more debts. The debts that I have were not due to irresponsibility on my part. They are due to changing economic circumstances in the mid 1990s. (5)

Applicant made no effort to contact any creditors following his interview with the DSS agent, figuring the creditors would eventually attach his wages or contact him telephonically. Over the 1999/00 time frame, Applicant had little opportunity to work overtime. About once every three months, he would work a weekend shift for extra money. Overtime availability increased in 2001, and during a four-month time span, Applicant worked ten hours a day, seven days per week.

Circa February 2002, Applicant's spouse left her position as a medical assistant at \$13.50 per hour to work as a receptionist for a psychiatrist. Currently earning \$9.00 per hour for a 17 ½ hour work week, Applicant's spouse elected to concentrate on her studies to obtain her associate's degree. Scheduled to graduate in ay 2002, Applicant's spouse intends to continue her education to become a registered nurse, and to that end, she applied for admission to nursing programs at a few local institutions. With his spouse earning about \$250.00 less per week, Applicant fell behind on his mortgage payments of \$1,076.00 per month.

In Spring 2002, the overtime available to Applicant increased substantially, but it was not enough to cover their expenses. Working on average six and sometimes seven days per week, Applicant is paid time and a half for Saturdays and double time on Sundays. With a base rate of \$17.53 per hour, Applicant's gross earnings for the last two weeks of March 2002 totaled \$1,823.12.

In March 2002, behind on his mortgage payments, Applicant retained the services of a mortgage assistance company to negotiate on his behalf with his mortgage lender in an effort to establish a new payment plan on his home mortgage. Required to pay a representation fee to the mortgage assistance company equivalent to his monthly mortgage payment, Applicant used his \$1,200.00 federal income tax refund to pay the fee. A state income tax refund of about \$500.00 was spent on other bills.

Applicant contacted consumer credit counseling in March 2002 for assistance in resolving his delinquent debts. Informed he and his spouse would need about \$400.00 in added income each month to pay his old bills, Applicant was unable to enter into an agreement with the consumer credit counseling services to resolve his indebtedness.

As of April 2002, Applicant had fallen behind about \$500.00 in his electric bill due to charges related to the use of electric heaters in the family home after the boiler blew. Applicant had not yet received a response to his request for financial assistance from an urban housing agency. Enrolled in a matching payment program with his gas company, he expected to be even with that utility provider by the end of the month.

Applicant has managed to remain current in his car loan payments. As of April 2002, the balances of his automobile loans were around \$6,000.00 and \$14,000.00, respectively. Applicant has contemplated filing for bankruptcy to resolve his old debts, but feels he has a moral obligation to resolve his outstanding obligations. Applicant intends to pay those debts when he is financially able to do so. With his wages being garnisheed at the rate of \$25.00 per week to pay off a judgment debt awarded a local hospital, Applicant estimates he has \$15.00 available to devote to payment of his delinquencies.

Applicant currently serves in an unpaid position as a youth minister for his church. He had served as a pastor of a church in the past.

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)

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:

Perhaps best evidenced by their purchase of a timeshare in 1993, Applicant and his spouse spent freely when they were both employed full time. When his spouse was laid off from her position as a phlebotomist, she elected to stay home with their young children. With the loss of her income and limited overtime available to Applicant, they applied for a program whereby they reduced their monthly mortgage payment by \$600.00. Even with their mortgage payment down to about \$362.00 per month, Applicant and his spouse stopped payment on other accounts. Financial accounts were left unaddressed, even after his spouse returned to work on a full time basis in 1998. Applicant and his spouse took on new debt in the form of two auto loans totaling \$825.00 per month as creditors resorted to civil judgment actions to collect

their debts. By August 1999, when Applicant completed his SF 86, he owed more than \$15,000.00 in unsecured debt in addition to the arrearage on his mortgage from the three years of reduced payments. 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 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.). Applicant presents a history of extensive financial difficulties which cannot entirely be attributed to factors beyond his control. The loss of his spouse's income and limited overtime are factors which compromised his ability to repay his legitimate obligations, but Applicant also took on sizable debt while ignoring other financial accounts. In 1997, he and his spouse financed the purchase of a sedan, taking out a loan of \$17,933.00 while other financial obligations, such as those set forth in SOR subparagraphs 1.a., 1.h., 1.k., 1.l., 1.n., and 1.q., were left unaddressed. After Applicant's spouse returned to work in 1998, other credit accounts and local tax obligations fell delinquent. With several orders to garnish his wages pending, Applicant financed the purchase of a van through a loan of \$31,655.00. Notwithstanding the need for the van in his ministry, he clearly could not afford the \$527.00 monthly payments. In Summer 2000, he opened a couple of credit card accounts which were written off in 2001 in the amounts of \$1,124.00 and \$514.00.

While those civil judgments awarded the nationwide retailer, the furniture company, and a hospital have been satisfied through garnishments, a medical debt owed a local hospital is currently being repaid through wage attachment, and Applicant has paid back sewer taxes, it is too soon to conclude that his financial problems are safely of the past. Applicant still owes those debts alleged in subparagraphs 1.d., 1.f., 1.h., 1.i., 1.j., 1.l., 1.n., 1.o., 1.p., 1.q., and 1.r. of the SOR. While Applicant and his spouse managed to reduce the arrearage on their mortgage to \$27,000.00, he and his spouse have had difficulty keeping up with their housing obligation in the last six months. In Fall 2001, when he and his spouse were both working full time, Applicant had to take out a \$500.00 loan from the credit union to make the mortgage payment. In March 2002, behind in the mortgage, Applicant sought the assistance of a mortgage assistance corporation to secure a more favorable plan. He also consulted with a consumer credit counseling service. His recent efforts to secure financial assistance are viewed favorably. Yet, the need to negotiate the terms of his mortgage and his inability to enter into a debt management program with the consumer credit service due to lack of income confirm that his financial situation remains tenuous.

Given Applicant's record of candor with the Department of Defense about his financial problems, the sincerity of his intent to eventually satisfy his old delinquencies is not doubted. However, he has no reasonable prospect of satisfying in the near future his delinquent accounts, which total some \$17,119.09 (exclusive of the \$27,000.00 arrearage on his mortgage). When asked at his hearing about funds available for debt repayment, Applicant responded he has about \$15.00 each month. Furthermore, even if Applicant were to satisfy all his delinquent indebtedness, he has not demonstrated a track record of sound financial judgment. Applicant has exhibited a tendency to make financial purchases without regard to whether he can afford them. As of Summer 2000, when he was well aware of the outstanding financial judgments and collection debts, Applicant incurred new credit debt beyond his ability to repay. At this juncture, it would be premature to conclude he can be counted on to avoid falling into serious debt in the future. Since those debts alleged in SOR subparagraphs 1.a., 1.b., 1.c., 1.e., and 1.g. have been, or are in the process of, being repaid, favorable findings are returned as to those allegations. Applicant having presented evidence to raise credible doubt as to his legal responsibility for the debt alleged in 1.m., that subparagraph is also concluded in his favor. Adverse findings are warranted with respect to the remaining allegations, Applicant having made no effort to repay those debts and there being no reasonable prospect of him being able to satisfy them in the near future.

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.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: Against the Applicant

Subparagraph 1.l.: Against the Applicant

Subparagraph 1.m.: For the Applicant

Subparagraph 1.n.: Against the Applicant

Subparagraph 1.o.: Against the Applicant

Subparagraph 1.p.: Against the Applicant

Subparagraph 1.q.: Against the Applicant

Subparagraph 1.r.: Against the Applicant

Subparagraph 1.s.: Against the Applicant

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 amended his responses to subparagraphs 1.a., 1.b., and 1.m. of the SOR.
2. The Government alleged a debt of \$1,124.00 to the creditor. While Applicant reported on his August 1999 security clearance application a debt of \$1,124.00 owed that creditor, available credit records do not substantiate that balance on that account. However, his recent credit report of March 2002 reflects a different account with the same creditor, opened in July 2000, was charged off to profit and loss in March 2001 in the amount of \$514.00.
3. Applicant included a \$1,500.00 MasterCard credit card debt which he now disputes on the basis it was a debt of his now deceased father. Since Applicant's recent credit report of March 2002 bears his father's date of birth (*See Ex. F*),

there is a reasonable basis to believe the debt was not Applicant's.

4. Applicant reported on his SF 86 that he owed this dentist \$50.00 for services incurred in or before March 1998. *See* Ex. 1.

5. *See* Ex. 4.