

DATE: January 5, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31872

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financial delinquency since his divorce in 1996 when he was awarded custody of his two sons but had to pay alimony to his ex-wife. A subsequent reduction in income due to a career change left him unable to timely repay several accounts, including a personal loan of \$25,000 taken out to repay consumer credit card debt, about \$3,000 in legal fees owed his divorce attorney, and a consumer credit card debt of about \$11,437. Despite a 40 percent increase in his salary since he began his current job in early August 2003, he still owes about \$41,000. In April 2004 he arranged to repay all but the debt consolidation loan through a non-profit debt management plan that requires him to pay \$540 monthly. There is not enough of a track record of repayment to overcome the security concerns caused by his financial problems. Clearance is denied.

STATEMENT OF CASE

On November 7, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR 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. [\(1\)](#) 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).

On December 12, 2003, Applicant filed his response to the SOR and requested a hearing before a DOHA administrative judge. The case was assigned to me on arch 23, 2004, and pursuant to notice of that date, a hearing was scheduled for April 21, 2004. At the hearing held as scheduled, the Government's case consisted of eight exhibits (Ex. 1-8). Applicant presented two exhibits (Ex. A and B) and testified, as reflected in a transcript received May 5, 2004. The record was held open until May 5, 2004, for Applicant to submit proof of payment of past due accounts. On the due date, Applicant timely submitted documentation of satisfaction of the debts alleged in SOR subparagraphs 1.d. and 1.h. Department Counsel having no objection thereto, the documents were marked collectively and admitted as Exhibit C.

FINDINGS OF FACT

DOHA issued an SOR because of nine debts with an aggregate outstanding balance of \$41,453. Applicant denied any responsibility for the medical debt alleged in subparagraph 1.a., and claimed he had satisfied those debts alleged in subparagraphs 1.b. and 1.d. Applicant admitted owing the remaining creditors, although he maintained his student loan debt alleged in 1.g. had been brought current. His admissions are incorporated as findings of fact. After a complete and thorough review of the evidence, I render the following additional findings:

Applicant is a 42-year-old orbital analyst who has been employed full-time since August 2003 for a defense firm subcontracting for a federally funded research and development laboratory. Applicant had worked directly for the laboratory from September 1985 to September 1999 and as a limited consultant (52 days per year) thereafter until August 2003. Initially granted a secret clearance in July 1986, Applicant needs to maintain his clearance for his current work as a subcontractor employee.

Married in March 1985, Applicant has two sons born in May 1985 and May 1987. In July 1991, he and his spouse separated. The court subsequently ordered him to pay \$1,200 per month to a joint account for specific household, medical, and child-care related expenses, \$625 to his spouse with his share \$575. Applicant had physical custody of their two sons. In March 1993, Applicant and his spouse reconciled but the court-ordered payments continued. She came back to the family household with debts incurred during their separation that Applicant felt obligated to repay. In February 1994, Applicant began to pursue his teaching certification in preparation for a new career. His education was financed through a student loan of approximately \$3,321 (subparagraph 1.g.). The loan was in forbearance until 2003.

In November 1994, Applicant and his spouse separated for the second time. He retained physical custody of their two sons, and she moved into her own place. In August 1995, the court awarded him legal custody of the children but he was also required to pay \$75 per week in separate maintenance for his soon to be ex-wife. The funds were withheld from his paycheck per court order. In the final decree of divorce in April 1996, Applicant was ordered to continue the \$75 weekly payments for five years. He was also mandated by the court to place his sons in a structured after school program at a cost to him of between \$475 and \$500 per month. Applicant opened three or four credit card accounts to pay their living expenses and over the next three years, he accumulated about \$20,000 in credit card debt. ⁽²⁾

In 1998, Applicant's financial situation was negatively affected by the need to replace his vehicle. He bought a used car in January for \$1,200 that had to be replaced later that year. In November 1998, he purchased a 1990 model year van, taking out an unsecured personal loan of \$7,000 that has been repaid. As of ay 1998, he no longer had the after school program expense, but he had significant credit card debt. In September 1998, Applicant incurred a \$1,000 dental bill for repair of his son's teeth on which he still owed \$729 as of July 2003. In March 1999, Applicant obtained a debt consolidation loan of \$25,000 to be repaid at \$595 per month for 60 months. Applicant used the proceeds of the loan to pay off some of his delinquent consumer credit card accounts, including a \$13,000 balance on a VISA Gold account.

In May 1999, Applicant attempted for the third time to gain relief from the court order to pay alimony to his ex-wife without success. That July, he contacted a consumer credit counseling service for assistance in dealing with his mounting debt, but could not pay the \$800 per month demanded for the debt repayment services. In August 1999, he replaced the transmission in his minivan that he had bought the previous November. Believing personal bankruptcy was inevitable, Applicant left his full-time job as an orbital analyst with the research laboratory and relocated with his two sons to his native area where he was hired as a science teacher for a local school district at \$29,000 a year. He incurred relocation costs of about \$900 but the cost of housing was less in the new area.

In October 1999, Applicant was awarded a one-year consulting contract (renewed annually to mid-2003) with the laboratory, supplementing his income on average by \$11,000 to \$12,000 annually. With one VISA card account late 30 days (not alleged in SOR but balance owed of \$4,954 as of April 2004, *see* Ex. B), Applicant opened a MasterCard account with another financial institution (subparagraph 1.i.) in April 2000 on which he subsequently ran up a balance of \$11,518. In June 2000, he consulted with a bankruptcy attorney but did not pursue that option as he felt legally responsible for the balances incurred. In July 2000, Applicant completed a security clearance application in conjunction with his duties as an orbital analyst for the laboratory. Applicant reported that he was over 90 days delinquent on one debt, his debt consolidation loan taken out in March 1999.

In February 2001, Applicant began working on his master's degree that was needed to retain his teaching certification. He took three to six credit hours per semester to Fall 2003, at a cost to him of about \$800 per credit hour while continuing to teach in the local school system at an annual salary of \$31,000. His income from his consulting work for the laboratory went for his tuition, fees, and books. In January 2002, Applicant had his oldest son arrested for holding a party with alcohol attended by about 20 of his underage friends. While Applicant incurred legal representation fees of at least \$250, bail costs of \$500 (\$1,000 more fronted by his parents, and drug rehabilitation program costs for his son of \$400, he felt this was the only way he could get his son the help needed. As of June 2002, Applicant had a past due collection balance of \$82 for the drug rehabilitation program (subparagraph 1.b.). He was also at least 30 days late paying his MasterCard account (subparagraph 1.i.) several times in 2002, making sporadic payments to keep it out of collection. As of April 2002, a local hospital had placed a \$269 unpaid balance for collection (subparagraph 1.a.).

Applicant's status with the local school board suffered because of his son's illegal activity, and he resigned from his employment at the end of the school year (effective September 2002) when the superintendent wanted to extend his probationary period for another year. In August 2002, Applicant was interviewed by a special agent from the Defense Security Service, in part about his financial difficulties. Applicant attributed his delinquencies to his divorce, the required alimony payments of \$75 per week for five years, and after school program costs for his sons of about \$450 per month for about three years. He admitted owing over \$20,000 on the debt consolidation loan, which had been placed for collection, but added he had been making \$75 monthly payments on that account. Applicant volunteered that he also owed his divorce attorney about \$2,800 (subparagraph 1.f.), a dentist for the reconstruction of his son's teeth (debt not alleged), and whatever the insurance did not pay for his son's drug rehabilitation (subparagraph 1.b.). Applicant intended to honor these debts but had yet to make payment arrangements. Applicant acknowledged the hospital debt in collection that he had no intent to pay since his son was transported to the hospital without his permission and without consulting him after his son was injured at work. Applicant provided a personal financial statement, reporting a net monthly positive balance of \$1,233 after payments of expenses and debt payments totaling \$475 (\$75 on his debt consolidation loan and \$200 each on his VISA and MasterCard accounts).

In September 2002, Applicant began teaching in another school district at an annual salary of \$39,000 with relocation costs his responsibility. That September, an unpaid medical bill for his sons of \$274 was placed for collection (subparagraph 1.h.). In February 2003, he replaced the transmission in his vehicle at a cost of \$1,500. As of May 2003, his previous long distance telephone carrier had placed a \$245 unpaid balance in collection (1.e.). With his MasterCard account (1.i.) past due 120 days, and a department store charge account charged off in the amount of \$110 (1.d.), Applicant met with a bankruptcy attorney in April 2003. In an effort to avoid bankruptcy, Applicant decided to return to his orbital analyst duties full-time at a salary increase of 40 % that would hopefully give him the financial means to address his obligations. That summer, after the close of the school year, his older son required emergency medical treatment at Applicant's expense.

With his consultant contract ending and a higher salary on the horizon, Applicant made several payments that spring and summer, satisfying his outstanding dental and pediatrician (1.h.) bills (albeit the latter by credit card) and the small balance for the drug rehabilitation (1.b.) that had been in collection. He also paid \$250 of his debt owed to his divorce lawyer, and \$958 on his MasterCard debt (1.i.), reducing the balance of his credit card debt to \$11,177.63. He made no payments on his debt consolidation loan balance of \$22,715.50 as the collection agency had reneged on a promise to reduce the balance.

In response to financial interrogatories from DOHA, Applicant indicated in July 2003 he was paying the legal fees from his divorce at the rate of \$250 per month, was making payments on his MasterCard in an effort to bring it current, and planned to begin repaying his \$3,321 student loan at the rate of \$100 monthly. He was still waiting to hear from the collection agency about a reported outstanding balance of \$110 (1.d.) on a department store credit card, but claimed he had paid the account in full in July 2002. He also expected to pay his old long distance telephone service debt by the end of September 2003. Applicant estimated he had a negative monthly balance of \$238 as of July 22, 2003, after payments of \$100 on his open VISA card, \$260 on his delinquent MasterCard debt, and \$250 to his divorce attorney.

In August 2003, he began working full-time as a subcontractor at the laboratory at an annual salary of \$66,000. Applicant's younger son (then 16 years old) moved in with Applicant's ex-wife while his older son remained with him. His rental obligation in his new locale was \$1,050 per month, an increase over the \$625 he had been paying. In

September 2003, Applicant incurred about \$450 in rental car expenses while his automobile was being repaired and \$300 in medical costs for an emergency room visit. In October 2003, Applicant started voluntary child support payments to his ex-wife of \$75 per week that he continued to late March 2004. In November 2003, Applicant's older son had another emergency room visit at Applicant's expense.

On November 7, 2003, DOHA issued an SOR alleging unpaid debt totaling \$41,453, exclusive of the VISA card debt of about \$5,000 that had been past due 30 days as of June 2003. In response, Applicant indicated he had paid in full the debts alleged in SOR subparagraphs 1.b. and 1.h., was current on his student loan, and making payments (less than \$1,000 total) to his divorce attorney (1.f.) and on his delinquent MasterCard account (1.i.). Applicant expressed his intent to make monthly payments of \$600 on the \$22,715 balance of his debt consolidation loan and to accelerate his payments to his divorce attorney commencing in the first quarter of 2004. He planned to pay the \$269 (an updated balance) long distance telephone debt within 21 days. Applicant challenged the validity of the hospital debt (1.a.), and the \$110 balance (1.d.) reported as delinquent by the department store.

In January 2004, Applicant spent \$1,500 to repair his van and another \$300 for a rental car while his vehicle was being repaired. In March 2004, he learned of a non-profit organization where he could satisfy his debts through a debt management program in return for a monthly service fee of \$35. In April 2004, Applicant arranged to have \$23,876 of his debt repaid in the program. He included in the debt management plan the \$196 balance being collected for the hospital (1.a.), his VISA card debt of \$4,954 (not alleged), his student loan balance of \$3,143 (1.g.), the \$3,180 owed his divorce attorney (1.f.), and the \$12,403 balance of his MasterCard account (1.i.). With monthly payments of \$540, Applicant expects to have these debts paid off in just under four years. Applicant's first payment of \$540, made on April 16, 2004, was retained by the foundation and not applied to the debt. Applicant could not afford the additional \$500 per month that would be required to include the debt consolidation loan in the plan. He intends to include that debt when it is financially feasible to do so.⁽³⁾ As of arch 2004, the balance of that delinquent loan was about \$18,272.

Applicant paid off the department store debt (1.d.) on or about April 16, 2004. He learned from the collection agency that he also owed \$269 for local telephone services since 1999. Applicant has been unable to determine who is collecting on the debt that had a current balance of \$360 (1.e.). He intends to repay that debt when he finds out who has it. As of mid-April 2004, Applicant also owed \$1,500 for medical services rendered to him and/or his son during the latter half of 2003.

With his \$66,000 annual salary, Applicant estimates he has about \$400 in discretionary funds each month. As of mid-April 2004, he had only about \$105 in savings to draw on in an emergency.

He has not taken any expensive vacations, but spent an additional \$180 in cable television costs so that he could view the games of the professional ice hockey team in his native area. Applicant expects to have all his outstanding financial obligations paid off in seven years.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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.* 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." Exec. Or. 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.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to

deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Considering the evidence as a whole, I find the following adjudicative guidelines to be most pertinent to this case:

Financial Considerations

E2.A6.1.1. The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

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

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

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

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

E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation);

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

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:

Under Guideline F, the security eligibility of an applicant is placed into question when the applicant is shown to have a history of excessive indebtedness, recurring financial difficulties, or a history of not meeting his financial obligations. The Government must consider whether individuals granted access to classified information are because of financial irresponsibility in a position where they may be more susceptible to mishandling or compromising classified information. Applicant has a history of financially delinquent accounts, as evidenced by his need to take out a debt consolidation loan of \$25,000 in March 1999 to pay high credit card balances, including \$13,000 on a VISA Gold account. He continued to accrue credit card balances even after he was no longer obligated to pay alimony to his ex-wife and after school costs for his two boys, running up about \$5,000 in debt on a VISA card and more than \$11,000 on a MasterCard by July 2003 while failing to make timely payments on his debt consolidation loan. After payment of more than \$1,900 on his old debts in 2003, Applicant still owes more than \$40,000 to various creditors. Applicant's failure to timely pay his financial obligations is potentially security disqualifying under E.2.A6.1.2.1. *A history of not meeting financial obligations*, and E2.A6.1.2.3. *Inability or unwillingness to satisfy debts*, of the financial considerations guideline.

Applicant's financial problems started with his divorce. He was sole supporter for his two sons and incurred about

\$3,000 in legal fees, \$325 per month for separate maintenance to his ex-wife, and \$450 to \$500 per month in after school costs. There were unexpected dental costs of \$1,000 in September 1998 when his son knocked out his teeth. He also had significant motor vehicle expenses in 1998 when a car purchased for \$1,200 that January had to be replaced in November. While circumstances beyond his control led to his financial difficulties (*see* mitigating condition E2.A6.1.3.3.), Applicant contributed to his financial woes by leaving his position at the laboratory in August 1999 for a teaching career that would not provide the income to repay his creditors, including the debt consolidation loan of \$25,000 taken out only six months before. Despite an increase in his annual income of at least \$8,000 annually with a change of teaching positions in September 2002, he made no effort that Fall to repay the \$726 dental bill in collection since 2000 or his divorce attorney, and was late several times in his payments on his MasterCard account while at the same time reporting a net monthly remainder of at least \$1,233.

Applicant is to be credited with making payments of more than \$1,900 in the Spring and Summer of 2003 to keep his MasterCard out of collection, and to satisfy the dental debt for his son and those medical accounts in 1.b. and 1.h. (*see* MC E2.A6.1.3.6. individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts), payments that pre-date the issuance of the SOR. Yet, a review of the record indicates promised payments on other accounts either were not made or not continued. In response to DOHA interrogatories, Applicant related in July 2003 that the \$3,000 owed his divorce attorney was being paid at the rate of \$250 per month, and his student loan of \$3,321 would be repaid at \$100 per month beginning in July 2003. Those payments were apparently not made, as the balances on those debts as of April 2004 were \$3,180 and \$3,143, respectively. Car troubles again negatively affected Applicant's finances as he was forced to spend \$1,500 to repair his vehicle and \$300 in car rental costs in January 2004, ⁽⁴⁾ but at the same time, Applicant spent \$180 in extra cable television fees so that he could watch his home hockey team. This expenditure is difficult to justify when several bills remain unpaid.

As of April 2004, Applicant had entered into a debt management plan to repay about half of his outstanding debt in return for payments of \$540 per month. Although this is a positive step, Applicant does not have a demonstrated track record of consistent repayment from which one could safely conclude that he will make the required monthly payments under the plan. He had only \$105 in savings despite an annual salary of \$66,000, little to draw on should he be faced with a financial emergency. Applicant is found to be sincere in his intent to resolve his debts, but something has always come up (not all unexpected expenses) that has prevented him from timely satisfying his obligations. His recent efforts are not enough to overcome the security concerns presented by his longstanding financial difficulties. Adverse findings are warranted as to those accounts still outstanding (subparagraphs 1.c., 1.e., 1.f., 1.g., and 1.i.).

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.: Against the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: 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. Clearance is denied.

Elizabeth M. Matchinski

Administrative Judge

- 1.
2. Applicant's credit report of July 15, 2003, reflects credit card accounts that were never late and are now closed, including a revolving charge opened in June 1995 with a high balance of \$6,166, a VISA credit card account opened in July 1991 with a high balance of \$3,213, a MasterCard account opened in December 1995 (high balance not listed), a revolving charge opened in February 1996 with a credit limit of \$7,000, a revolving charge with a high balance of \$10,000 opened in March 1996, a bank credit card opened in July 1996 with a high balance of \$13,303.
3. Applicant testified the balance of the debt consolidation loan was \$18,272 as of March 2004, which was down from the \$22,715.50 balance as of June 2003. Applicant provided no proof of payments on that account but he has been candid about his indebtedness to where his testimony is accepted.
4. Applicant testified his oldest son had another emergency room visit in November 2003 not covered by insurance. Whereas Applicant received a bill in April 2004 for hospital visits during the latter half of 2003, he apparently had not paid these costs.