

DATE: April 19, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-21282

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Although Applicant has a full-time position with the federal government, in addition to his full-time position as a security officer with a defense contractor, and he receives retirement pay for his service in the Navy, more than \$1,782.00 is garnished from his income each month for child support he is required to pay four jurisdictions for his six children. Applicant has established his payment of some lesser bad debts, but he has failed to mitigate his arrearage for child support that exceeds \$18,000.00. Applicant has also failed to demonstrate any improvement from a \$455.00 per month deficit on his personal financial statement in ay 2003. Clearance is denied.

STATEMENT OF THE CASE

On August 25, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order [\(1\)](#) and Department of Defense Directive, [\(2\)](#) issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline F (Financial Considerations). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to classified information and recommends that his case be submitted to an Administrative Judge.

Applicant submitted a response to the SOR, dated October 4, 2003, in which he requested a hearing. The case was assigned to me on December 1, 2003. A notice of hearing was issued on December 23, 2003 and the hearing was held on January 7, 2004. During the hearing, 15 Government exhibits (Govt Ex), 11 Applicant exhibits (Ap Ex) and the testimony of two Applicant witnesses, including Applicant, were received. The transcript (Tr) was received on January 15, 2004.

PROCEDURAL ISSUE

Without objection from Department Counsel, I granted Applicant until January 21, 2004 to submit corroboration of debt payments and character evidence. In a timely manner, Applicant submitted documents that I have marked as Ap Ex L.

Department Counsel objected to Ap Ex L-3 and Ap Ex L-4. ⁽³⁾ Although I have admitted the entire exhibit, I have disregarded the annotations on Ap Ex L-3 through Ap Ex L-5, since they are not part of the record but merely someone's opinion of what the documents represent. After the due date, Applicant subsequently submitted additional documents that I have marked as Ap Ex M. Since Department Counsel did not object, I have admitted Ap Ex M.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 41-year-old security officer employed by a defense contractor. He is seeking a security clearance. He is also a civilian employee of the Department of Defense.

In February 1997, Applicant incurred a debt in the amount of \$165.00 to a medical provider that he failed to pay. In 1998, the creditor assigned the unpaid debt to a debt collector. The record fails to establish that the debt has been paid or otherwise resolved (SOR ¶ 1.f).

On March 25, 1998, a court in state M issued an order requiring Applicant to pay child support of \$414.83 per month for a child by LG. ⁽⁴⁾

In July 1998, Applicant opened a bank credit card account. He incurred a delinquent debt in the amount of \$82.00 that the creditor charged off as a bad debt by September 2000. The record fails to establish that the debt has been paid or otherwise resolved it (SOR ¶ 1.e).

In April 1999, a court in state P ordered Applicant to pay child support in the amount of \$712.00 per month for his three children by his ex-wife. ⁽⁵⁾ By May 2003, Applicant was in arrears by more than \$18,000.00 to his ex-wife for child support (SOR ¶ 1.g). The record fails to establish that this delinquent obligation has been satisfied.

In October 2000, Applicant opened a bank credit card account. He incurred a delinquent debt in the amount of \$630.00 that the creditor charged off as a bad debt and assigned to a debt collector. On January 6, 2004, Applicant paid \$465.30 to the debt collector to settle the bad debt (SOR ¶ 1.c).

On October 5, 2000, Applicant completed a Questionnaire for National Security Positions (SF 86). ⁽⁶⁾ Although he failed to sign the certification, he signed the authorizations for release of information. Despite having delinquent debts as set forth above, he answered, "no," in response to both question 28a ⁽⁷⁾ and question 28b. ⁽⁸⁾ Despite having been taken to court by his ex-wife to obtain child support, he also answered, "no," to question 29. ⁽⁹⁾

On June 21, 2001, a court in state V issued a garnishment order against Applicant for child support, including past-due support, in the amount of \$409.93 per month for a child by AR. ⁽¹⁰⁾

In October 2001, Applicant incurred a debt in the amount of \$57.00 to a medical clinic. After he failed to pay the debt, it became delinquent and was assigned to a debt collector. On November 24, 2003, Applicant paid the debt collector the balance due, \$68.83 (SOR ¶ 1.a).

On January 17, 2002, a court in state P issued a garnishment order against Applicant for \$50.00 for being in arrears in his child support for a child by EA (SOR ¶ 1.d). ⁽¹¹⁾ By May 2003, Applicant was \$767.54 arrears for this support. ⁽¹²⁾ The record fails to establish that this delinquent obligation has been satisfied.

In March 2002, incurred a loan in amount of \$22, 256.00 to purchase a vehicle. His monthly payment is \$623.00. By May 2003, Applicant was two months delinquent in his payments. He has paid the delinquency and is current on the loan (SOR ¶ 1.b).

On April 12, 2002, Applicant provided a sworn statement to a Defense Security Service (DSS) investigator, in which he described his child support obligations to four women for six children and explained the reasons he was in arrears for

such support.

In May 2003, Applicant provided a personal financial statement in which he listed: a monthly net salary for his wife of \$5,000.00 per month; child support payments of \$1,366.00 per month; a mortgage payment of \$2,500.00 per month; and utility expenses of \$600.00 per month. Based on the information he supplied, his monthly expenses and debt payments exceeded his income by \$455.00 (SOR ¶ 1.h).

Applicant is paid every two weeks by the defense contractor for whom he is employed. His pay varies depending on the hours he works. On his latest pay statement in the record, dated November 21, 2003, his net pay was \$1,002.91. From each of his payments from this employer, \$157.36 is garnished for child support. [\(13\)](#)

In August 2003, Applicant's became employed as a GS-5, step 5, with the DOD. On his latest statement in the record, January 2, 2004, his net pay was \$553.90. From each payment, \$472.01 is garnished for child support and his net pay did not exceed \$579.54. [\(14\)](#)

Applicant was also been employed by a bookstore, for which he was paid every two weeks. His pay varied depending on the hours he worked. Based on his latest pay statement in the record, dated August 22, 2003, he received \$220.34. From each of his payments from the bookstore, \$346.61 was garnished for child support. [\(15\)](#)

Applicant currently receives net retirement pay from the U.S. Navy in the amount of \$358.60 per month. From his monthly Navy retirement pay, \$534.09 is garnished for child support. [\(16\)](#)

POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts

admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Any doubt as to whether

access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

Guideline F: Financial Considerations

The concern is that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Conditions that could raise a security concern and may be disqualifying include E2.A6.1.2.1, a history of not meeting financial obligations (Disqualifying Condition 1). They also include E2.A6.1.2.3, inability or unwillingness to satisfy debts (Disqualifying Condition 3).

Conditions that could mitigate security concerns include E2.A6.1.3.6, the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (Mitigating Condition 6).

CONCLUSIONS

The evidence in the record of Applicant's delinquent indebtedness substantiates SOR ¶ 1.a through SOR ¶ 1.h. It demonstrates Applicant's history of not meeting financial obligations, as well as his inability or unwillingness to satisfy debts (Disqualifying Condition 1 and Disqualifying Condition 3).

Because Applicant's responses to questions on an SF 86 did not appear consistent with the facts in his background, it is necessary to find corroboration in the record for his representations, especially those regarding the satisfaction of his debts and obligations.

Applicant's wife testified that his debt to a medical clinic resulted from a missed medical appointment and she paid it off (SOR ¶ 1.a). Applicant subsequently submitted a copy of a receipt as proof of payment.⁽¹⁷⁾ Department Counsel did not object to the receipt as evidence of payment as he did with other submissions by Applicant. The receipt can reasonably be interpreted to reference the debt collector and an amount approximating the debt balance. Therefore, Applicant has mitigated this delinquent debt in accordance with Mitigating Condition 6. I find in favor of Applicant with respect to SOR ¶ 1.a.

Applicant's latest credit report substantiates his assertion that he has paid the delinquency on his automobile loan and is now current (SOR ¶ 1.b).⁽¹⁸⁾ Therefore, Applicant has mitigated this delinquent debt in accordance with Mitigating Condition 6. I find in favor of Applicant with respect to SOR ¶ 1.b.

Applicant testified that he settled a credit card account with the debt collector (SOR ¶ 1.c). The document he subsequently submitted as proof of payment fails to corroborate that he paid the debt.⁽¹⁹⁾ It is not clear on the face of it what the information is or what it is from. Disregarding Applicant's annotation, the document does not contain any reference to the creditor, debt collector, account number of the debt. However, Applicant's latest credit report corroborates him by reporting that the bad debt on this account has been settled for less than the balance.⁽²⁰⁾ Therefore, Applicant has mitigated this bad debt in accordance with Mitigating Condition 6. I find in favor of Applicant with regard to SOR ¶ 1.c.

Although Applicant has been able to have his accounts for delinquent child support deleted from his credit reports, he has not provided any explanation for these deletions and has not submitted proof of paying or otherwise satisfying his arrearage (SOR ¶ 1.d and SOR ¶ 1.g). Although Applicant testified that \$12,000.00 of his largest arrearage was due to welfare his ex-wife received that he claimed he did not owe, he acknowledged he owed her \$6,000.00 in back child support.⁽²¹⁾ Applicant told a DSS investigator he became in arrears in his child support obligations because they "far exceeded what I was making while on active duty."⁽²²⁾ After he retired from the Navy, he became further in arrears before child support payments were deducted from his positions with a defense contractor and a bookstore. Applicant did obtain a reduction of his child support to his ex-wife in November 2001.⁽²³⁾ Still, more than \$1,782.00 is currently being garnished from his income each month to meet his child support obligations and the record does not show significant progress in the reduction of the amount he is in arrears. Although the garnishment of his income, even though involuntary, provides some mitigation of Applicant's indebtedness, it does not adequately address the security significance of his circumstances. Despite Applicant's income from two positions and his retirement pay, he is financially overextended due to the substantial amount of his child support obligation. Therefore, I find against Applicant with regard to SOR ¶ 1.d and SOR ¶ 1.g.

Applicant maintained that he settled another credit card account with the debt collector in October 2000 (SOR ¶ 1.e). He testified that he provided the information to the DSS investigator and that the investigator verified the settlement. Although the record confirms that Applicant told the investigator he had settled the debt, it does not confirm that the investigator verified it. Moreover, the debt is still listed in Applicant's latest credit report. The evidence that Applicant has supplied fails to corroborate him.⁽²⁴⁾ It evidences that he had submitted a payment for a delinquent debt but it does

not establish satisfaction of the same debt addressed by SOR ¶ 1.e. There is no reference to his account number with the creditor of the debt addressed by SOR ¶ 1.e. and there is nothing in the record to relate this debt collector to the creditor. Even if it is the same debt, Applicant's evidence does not support his settlement of it. It merely evidences a \$305.84 payment on a delinquent debt in the amount of \$628.49. Based on the record, Applicant has not met his burden under E3.1.15 of the Directive. The record leaves doubt as to whether Applicant has satisfied the debt. In accordance with E2.2.2 of the Directive, such doubt must be resolved in favor of national security. Consequently, I find against Applicant with regard to SOR ¶ 1.e.

Applicant's response to the SOR denied any knowledge of the indebtedness alleged by SOR ¶ 1.f. He testified he subsequently discovered the debt was for medical services provided to his daughter. Applicant testified he paid a settlement of \$140.00. However, the document he subsequently submitted as proof of payment fails to corroborate that he paid the debt. (25) It is not clear on the face of it what the information is or what it is from. Disregarding Applicant's annotation, the document does not contain any reference to the creditor, debt collector, account number of the debt, and the amount is different from the amount of the debt otherwise established by the record. Although the debt is no longer listed on Applicant's latest credit report, it could result from a reason other than payment or satisfaction. Applicant denied any knowledge of the debt when he contacted each credit bureau. In addition, the age of the debt could also be the reason for its removal from Applicant's credit reports. Once again, Applicant has not met his burden. The record leaves doubt as to whether Applicant has satisfied the obligation. Again, such doubt must be resolved in favor of national security. Therefore, I find against Applicant with regard to SOR ¶ 1.f.

In May 2003, Applicant provided a personal financial statement indicating that his monthly expenses and debts exceeded his monthly income by \$455.00 (SOR ¶ 1.f). (26) Applicant included his wife's income on the statement. Applicant's wife, who pays the bills, testified that the mortgage payment is \$2,200.00 per month. There was no explanation for the \$300.00 reduction from the mortgage reflected on Applicant's financial statement last May. Applicant's wife also testified payment of the monthly utilities, \$200.00-\$300.00, comes from his income. This is only half of the utility expenses listed on Applicant's financial statement last May and there is no explanation for this discrepancy. Although Applicant has presented evidence of increased income, he has not offered evidence of his total current monthly expenses and debt payments. Based on the pay records he submitted, the garnishments of his earnings from two employers and his military retirement pay have increased from the to \$1,782.00 per month, over \$400.00 more than the amount listed on his financial statement last May. He also included a \$5,000.00 per month net salary of his wife for which he has produced no records. Applicant has not met his burden of demonstrating to what extent, if any, his financial status has improved. Therefore, I find against Applicant with respect to SOR ¶ 1.h.

Applicant has failed to establish payment or satisfaction of all of his delinquent indebtedness. Moreover, he has failed to demonstrate significant improvement in his financial status or changes in financial management in order to avoid future financial difficulties. I find against Applicant.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

DECISION

In light of the evidence of record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Signed

Roger E. Willmeth

Administrative Judge

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.
3. Numerical references in Ap Ex L relate to the list of documents compiled by Department Counsel and included with Ap Ex L.
4. Govt Ex 10.
5. Govt Ex 7.
6. Govt Ex 1.
7. "In the last 7 years, have you been over 180 days delinquent on any debt(s)?"
8. "Are you currently over 90 days delinquent on any debt(s)?"
9. "In the last 7 years, have you been a party to any public record civil court actions not listed elsewhere on this form?"
10. Govt Ex 8.
11. Govt Ex 4.
12. Govt Ex 13.
13. Ap Ex I.
14. *Id.*
15. Ap Ex H.
16. Ap Ex A.
17. Ap Ex L-5.
18. *Id.*
19. Ap Ex L-4.
20. Ap Ex M-2.

21. Tr 104.

22. Govt Ex 11.

23. Govt Ex 7; Govt Ex 11.

24. Ap ex J.

25. Ap Ex L-3.

26. Govt Ex 15.