DATE: May 24, 2004

In re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 02-22581

ECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Rita O'Brien, Department Counsel

FOR APPLICANT

Gregory W. Eisenmenger, Esq.

SYNOPSIS

Applicant with history of sexually assaulting his minor stepdaughter pleaded guilty to felony child molestation in 2001 and was granted deferred adjudication and ten (10) years of supervised probation that included avoidance of his wife and children without the permission of the court. While he has made good progress with his voluntarily initiated treatment, he leaves too many recurrence doubts to make safe predictions he can be entrusted to avert any recurrent sexual misbehavior with his stepdaughter. More seasoning of Applicant's commitments to avoid any future sexual misbehavior is required before he can be safely entrusted to access classified information. Similarly, while he appears to have progress with his consumer debts (through bankruptcy) and child support arrearage, more documentation is needed to mitigate security concerns. Clearance is denied.

STATEMENT OF THE CASE

On August 11, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to 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 Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied, or revoked.

Applicant responded to the SOR on September 15, 2003, and requested a hearing. The case was assigned to me on February 2, 2004, and was scheduled for hearing on March 4, 2004. A hearing was convened on March 4, 2004, for the purpose of considering whether it is clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of six exhibits; Applicant relied on two witnesses (including himself) and no exhibits. The transcript (R.T.) was received on March 12, 2004.

PROCEDURAL ISSUES

Before the close of the hearing, Applicant requested the record be kept open to permit him to supplement the record with documentation of his bankruptcy petition, his child support arrearage receipts, and his visitation order from the dependency court. There being no objections from Department Counsel, good cause being shown, Applicant was afforded seven days after the hearing to supplement the record. The government, in turn, was given five days to reply. Within the time permitted, Applicant provided copies of child support payments, his year-to-date salary verifying garnishment payments, a case report from the local sheriff's office reflecting a burglary that resulted in lost past support payments, correspondence from the local child support enforcement office, a child support withholding order, an order/minutes of the dependency hearing outlining authorized visitation rights re: his children (including the victim), Applicant's joint federal income tax return for tax year 2003 showing projected refund to be applied to child support arrearage, and bankruptcy court pleadings.

Department Counsel interposed no objections to Applicant's documented year-to-date salary, child support office correspondence, the child support withholding order, the order minutes of the dependency hearing, Applicant's joint 2003 federal income tax return, and pleadings from the bankruptcy court. These documents are admitted as Applicant's exhibits A through F, respectively. Department Counsel objects, though, to Applicant's documented child support payments (on relevancy and materiality grounds) and the local case report reflecting a burglary that resulted in lost past support payments (also on relevancy and materiality grounds). That neither document is dispositive of the claims made in Applicant's proffer does not deprive the documents of relevance and materiality under the relaxed evidence requirements in these proceedings. They are admitted for the weight they deserve as exhibits G and H.

SUMMARY OF PLEADINGS

Under Guideline J, Applicant is alleged to have (a) been arrested in November 2001 and charged with capital sexual battery (a felony) and lewd or lascivious battery (a felony), to which he pleaded guilty to lewd and lascivious molestation of a child under 12 (a felony) and adjudication of guilt and sentence withheld and ordered to serve 10 years probation and (b) admitted to committing acts similar to those which he was arrested for on at least two other occasions.

Under Guideline D, Applicant is alleged to have (a) committed the same acts alleged under Guideline J and (b) been treated since June 2002 in a sex offenders' rehabilitation program by Dr. A of B Institute.

Under Guideline F, Applicant is alleged to have experienced financial difficulties: specifically, he is alleged to have accumulated (a) over $19,000.00 in delinquent consumer debts and (b) approximately $12,500.00 in child support arrearage, which have not been satisfied as of December 2001.

For his response to the SOR, Applicant admitted his 2001 arrest on sexual charges and his committing prior similar acts (on one previous occasion, not two as alleged). While he admitted to the child support order, he disputed the amount of the arrearage and denied each of the other listed debts covered by Guideline F.

STATEMENT OF FACTS

Applicant is a 33-year-old launch mechanic for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant married his current spouse (W) in early 1996. They subsequently adopted two children. Before their marriage, W had three children, each of whom came to live with Applicant and W after they were married. Applicant's step-children range in age from 14 (S) to 8 (T).

In 1998, while living outside the US, Applicant sexually molested his stepdaughter S (then age 9) on two to three occasions. Realizing at the time his behavior was inappropriate towards S, he told W what happened (R.T., at 62-64). Applicant and W attempted to see a counselor about Applicant's actions but were informed the area in which they were living had no programs in place to address personality issues associated with sexual abuse of a minor; they were advised to seek help in the US (*see* ex. 2).

In July 2000, Applicant and W were able to resettle their family in the US. Applicant delayed several months joining his

family in the US while he checked on employment opportunities. When he joined his family in February 2001, he took a job with his current defense contractor.

In October 2001, Applicant made new inappropriate sexual advances on S (just under 12 by this time). After the incident, he called several sources (including his health insurance and his company's employees assistance program) for assistance and was told they would have to report him to the police. Each of these groups reported Applicant to police who called Applicant shortly thereafter and asked him to surrender himself. When he did surrender, he was released on $50,000.00 bond and advised to enroll in a counseling program. Applicant enrolled in a program under the direction of Dr. B, who he continues to consult with today. In his November 2001 interview with DSS agent A, Applicant was not asked about his October 2001 arrest and volunteered nothing to the interviewing agent.

When arraigned in court on the sexual battery charges stemming from his inappropriate handling of S, Applicant pleaded guilty to a reduced charge of lewd and lascivious molestation of a child under 12 years of age (a felony). At a convened hearing on the pleaded molestation charge in April 2002, the court withheld adjudication of guilt and imposition of sentence and placed Applicant on ten years of supervised probation. By the terms of his probation imposed on him by the criminal court, Applicant was barred from seeing his children and wife without court approval and ordered to seek counseling.

For the first eight months of his probation, Applicant was not able to see his children; albeit, he was able to see his wife during this time once or twice a week to take care of family business matters. Applicant does not attribute any of his inappropriate actions with S with alcohol or drugs, but rather to an abusive childhood in which he, too, was victim of sexual and mental abuse. Applicant expects to complete his court-ordered probation according to schedule (*i.e.,* in 2012). In the meantime, he is registered as a sexual predator by virtue of the court's order applying existing state law (*see* ex. 2; R.T. at 34-35).

Following his October 2001 incident involving his stepdaughter, Applicant voluntarily sought professional treatment. Since the incident, he has received treatment from a sexual offenders rehabilitation program under the guidance of Dr. B (a certified clinical psychologist). Applicant's counseling is considered by Dr. B to be both voluntary and court-ordered. Dr. B found Applicant to be very cooperative in his initial evaluation of him and to have suffered from sexual abuse himself as a child: a common factor in sexual abuse cases and a factor attributable to Applicant's misbehavior. Dr. B did not find Applicant's misbehavior to be pervasive (*e.g.,* no other victims besides S). He characterized Applicant's previous encounters with S to comprise a single episode (*i.e.,* with the same person); even though his encounters were themselves multiple. Dr. B considers Applicant to be an exemplary patient with a very good prognosis and will certify Applicant's release from his therapy program when he is confident Applicant no longer presents any risk of recurrent misbehavior. By Dr. B's current estimates, treatment is most likely to stretch for another year or more (R.T., at 40-41). At the present, though, he doesn't foresee recidivism to be very likely for Applicant. Treatment includes individual and group therapy and polygraph testing twice a year. Results of the test are provided all of the involved parties (R.T., at 25). Besides Dr. B, Applicant continues to consult with two other mental health counselors about his mental health issues associated with his inappropriate actions with S.

The local dependency court issued a step-by-step reunification plan in July 2002. The plan initially provided for, in coordination with the criminal court which adopted the dependency court's unification plan as a part of Applicant's probation, joint visitation that permitted Applicant to have contact with all of his family, except for S. Each succeeding step in the plan requires advance approval of the dependency court. Both Dr. B and Applicant assure that the dependency court approved another step in the plan that permitted Applicant to have contact with all of his children (S included) in public places provided W was present (R.T., at 46). Pending approval in the dependency court is still another step in the plan: This step provides for increased visitation in the family home, subject to W being present to supervise Applicant's visits (R.T., at 49-50). Applicant remains hopeful of eventually reuniting his family (including his stepdaughter). But at the present time, Applicant is still prohibited by the dependency court from spending even one night in the family home. His immediate goal (backed by all of his counselors) is increased visitation in the home (R.T., at 50-51). At the moment, Dr. B cannot furnish any firm projections when Applicant's reunification into the home might be court-approved (R.T., at 44). Applicant's probation is not scheduled to expire until 2012.

Applicant got into financial difficulty in March 1996 when his in-laws became ill and asked Applicant to move their

place (outside the US) to manage their restaurant business for them. While managing the in-laws' business Applicant maintained control of his own finances. When the in-laws canceled this arrangement, he had difficulty finding work and his finances began to suffer. After struggling in the islands to keep his established tourist business going, Applicant returned to the US to work with his current employer. By 2000, though, he had fallen behind with his debts and sought debt counseling. He accumulated delinquent debts with each of his consumer creditors listed in the SOR. For awhile he had payment plans worked out with some of his creditors. But when these payments became too financially burdensome for Applicant to maintain, he stopped making them.

In April 2003, Applicant petitioned for Chapter 7 bankruptcy relief on the advice of counsel (*see* ex. H). His petition lists assets of $113,439.00 (including his home) and $168,853.00 in secured and unsecured claims (including his mortgage). He reports income for the completed 2002 year of just a little over $40,000.00. While Applicant claims a bankruptcy discharge, he provides no documented proof of one with his post-hearing submissions. Without a discharge order, the proceedings must be presumed to be still in progress.

Beginning in 1996, Applicant commenced paying monthly child support to the mother (X) of his son based on an agreement they made (reportedly for $200.00 a month or whatever Applicant could afford). Applicant is able to document making some child support payments to X: Between November 1996 and December 2002, Applicant is able to document around $2,100.00 in payments made to X (quite a bit lower than the $3,500.00 in documented payments he claimed at hearing). Records documenting additional payments to X could not be located by Applicant and are believed to have been removed by a burglar in June 1996. A July 1997 sheriff's report documents a burglary report but none of the records Applicant's claims. Based on the report alone it cannot be speculated how much additional support payments made to X in 1996.

Unbeknownst to Applicant, X went to court in 1996 to obtain court-ordered child support from Applicant. In July 1996 a court in the state of X's residence issued an order requiring Applicant to pay $250.00 monthly in child support. By September 2002, the arrearage had climbed to approximately $17,550.00 (*see* ex. 4). In June 2003, the chancery court exercising jurisdiction over X's child support petition entered an order setting monthly withholding for Applicant's child support to X at $250.00. The court added an additional $150.00 a month in withholding to cover Applicant's arrearage until satisfied. Since July 2003, Applicant's earnings have been attached at the rate of $400.00 a month to cover current child support owed to X and the computed arrearage. As the result of these deductions, Applicant's overall arrearage was reduced to $15,250.00 by November 2003 (*see* ex. 5). He expects to cut this arrearage to just over $8,000.00 by applying his expected federal tax return refund of $4,852.00 and the previously unaccounted for payments made to X (claiming around $3,500.00) over the six-year period spanning 1996 and 2002 (R.T., at 55). Applicant provides no documentation, however, of any tax refund application towards his arrearage, of an executed federal1040 return, or other concrete plan of how he expects to discharge his arrearage other than by pay withholding and application of his claimed tax refund to the arrearage. Applicant currently makes between $48,000.00 and $52,000.00 annually.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list policy guidelines to be made by judges in the decision making process covering DOHA cases. These guidelines, as interpreted by the DOHA Appeal Board, requires the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Criminal Conduct

The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness.

Disqualifying Conditions:

DC 1 Allegations or admission of criminal conduct.

DC 2 A single serious crime or multiple lesser offenses.

Mitigating Conditions: None

Sexual Behavior

The Concern: Sexual behavior is a security concern if it involves a criminal offense, indicates a personality or emotional disorder, may subject the individual to coercion, exploitation, or duress, or reflects lack of judgment or discretion.

Disqualifying Conditions:

DC 1 Sexual behavior of a criminal nature, whether or not the individual has been prosecuted.

DC 3 Sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress.

DC 4 Sexual behavior of a public nature and/or that which reflects lack of discretion or judgment.

Mitigating Conditions:

MC 4 The behavior no longer serves as a basis for coercion, exploitation, or duress.

Financial Considerations

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

Disqualifying Conditions

DC 1. A history of not meeting financial obligations.

DC 3. Inability or unwillingness to satisfy debts.

Mitigating Conditions

MC 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).

MC 4 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.

MC 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the judge may draw

only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of a material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of accessible risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant comes to these proceedings with no criminal history before his engaging in sexual transgressions with his stepdaughter in 1998, and again in October 2001, which resulted in his pleading guilty to lewd and lascivious molestation of a minor (a felony) in November 2001. Applicant's guilty plea and ensuing deferred adjudication and accompanying ten year probation (not due to expire until 2012) raise security concerns about his judgment and reliability under Guideline J (criminal conduct) and Guideline D (sexual behavior). Besides his criminal history, Applicant also has encountered financial problems with his consumer creditors and his child support obligations to the mother of his son (not his current wife).

Applicant's sexual offense history

That a family oriented person such as Applicant could also abuse his stepdaughter (S) carries both psychological and ethical dilemmas in determining Applicant's clearance suitability. While he has shown no unfaithfulness towards his employer or spouse, he brings a history of sexually abusing his stepdaughter on multiple occasions before being separated from her by the criminal court hearing the sexual abuse charges against him and the dependence court considering his visitation requests. Certainly there can be no stronger fidelity bond than the one that exists between a father and his daughter or stepdaughter (as here).

Both the courts and the Appeal Board have historically drawn broad lines of nexus to an applicant's non-official conduct and his executing his official duties in reliable and trustworthy fashion. *Cf*. DISCR OSD No. 90-1803 (March 31, 1992); DISCR OSD No. 87-2107 (October 30, 1991); *accord, Stanek v. Department of Transp.,* 805 F.2d 1572, 1577 (Fed. Cir. 1986) (employee's removal justified where employee's conduct, if tolerated, would impair the integrity of the federal government); *Ryan v. Department of Justice,* 950 F.2d 458, 460-61 (7th Cir. 1991) (employee's misconduct such that his retention would impair discipline, morale or productivity of agency).

Applicant's conduct (sufficiently proven in this case despite deferred adjudication) raises sufficient moral and trust questions about his overall character to be security significant. The parental-child bond fixes firm responsibilities on the parent to care and protect his children and stepchildren. Public policy has never countenanced a parent's divesting his responsibilities or relinquishing his care. Children look to their parents for physical and emotional sustenance. Applicant's actions betrayed the presumed trust placed in him to protect his children, both his own and those for whom he assumed parental responsibility, as he did with his stepdaughter (S).

Applicant's covered activities invite consideration of various disqualifying conditions under both the criminal conduct and sexual behavior guidelines of the Directive. His sexual transgressions with S (both in 1998 and 2001) involved aggravated and sexual assault, felonious conduct covered by both DC 1 (allegations or admission of criminal conduct, regardless of charges) and DC 2 (a single serious crime or multiple lesser offenses) of the criminal conduct guidelines.

Applicant's actions are also covered by DC 1 (sexual behavior of a criminal nature) and DC 3 (sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress) of the sexual behavior guideline. Considering the length of time of the covered activities (multiple times in 1998 followed by recurrent misbehavior in 2001) and the still relatively recency of the conduct (within three years), DC 4 (sexual behavior of a public nature and/or that reflects lack of discretion or judgment) warrants some bearing on the risk assessment associated with Applicant's activities as

well.

While Applicant provides few extenuating circumstances to weigh in his favor, he does bring a developing record of mitigation. His excellent treatment progress with Dr. B, his acceptance of the stringent probation conditions imposed on him by the criminal court, his increased family visitation privileges he has been able to arrange with the convened dependency court hearing his visitation requests, his expressed remorse, and his efforts to come to grips with his transgressions and begin the long, difficult process of reconciliation with his wife, children and S provide positive evidence of mitigation and are encouraging. Helpful to his rehabilitation, too, are his shown openness and candor with his treatment counselor and family. Whether Applicant is presently entitled to the Government's full trust and confidence is less than clear on the record presented. The low risk assessment by his court-referred treatment counselor is of very limited value because of the still recency of Applicant's misbehavior and time remaining in his probation. Applicant continues to face over eight years of probation (to 2012) under conditions that preclude him from seeing his children outside the presence of his wife, or having any contact whatsoever with his stepdaughter (S). Because of the seriousness of his sexual transgressions and the lengthy supervised probation he faces, Applicant continues to create troubling doubts about his ability to avert future sexual misconduct

Even with a low-risk re-offense assessment from Dr. B and Applicant's own assurances, it is difficult to credit Applicant with significant mitigation efforts in the face of his still unfinished treatment, his lack of any contact authorization from either responsible court, and the lengthy supervised probation he still faces. While there is certainly nothing in the Directive that makes current probationary status a *per se* bar to a favorable security decision, it cannot be discounted either. Our Appeal Board has observed that continued probationary status is a consideration that significantly undercuts an applicant's claim of successful reform and rehabilitation. *See* ISCR Case No. 96-0710 (June 20, 1997); DISCR Case No. 90-1115 (October 6, 1992).

Based on Applicant's history of transgressions with S, his ongoing treatment, and his probationary status and contact restrictions with S, neither MC 1 (lack of recency), MC 2 (isolated incident) nor MC 6 (clear evidence of rehabilitation) of the criminal conduct mitigation guidelines are available to Applicant. Nor may Applicant at this time take advantage of many of the mitigation conditions covered by the sexual behavior guideline for so long as he remains on probation, barred from having any contact with S, and subject to registration as a sex offender. Because Applicant is a registered sex offender in his state (predator was the actual terminology invoked by the court), MC 4 (behavior no longer serves as a basis for coercion, exploitation or duress) has some mitigating application.

Overall, Applicant fails to dispel all doubts about his risks of recurrent sexual breaches. Significant risks still remain about Applicant's recurrence likelihood. Weighing the seriousness of the sexual misbehavior against Applicant's imputed duties of trust, no fair conclusion can be reached in Applicant's favor that he has sufficiently recovered from his sexual transgressions (resulting in profound breaches of trust to his stepdaughter) to warrant continued entrusting him with access to classified information. More time in rehabilitation (including but not limited to his continuing treatment from Dr. B) is needed by Applicant to make the convincing case of mitigation by showing of successful rehabilitation (including completion of his court-imposed probation). Therefore, sub-paragraphs 1.a and 1.b of Guideline J and sub-paragraphs 2.a through 2.c of Guideline D are concluded unfavorable to Applicant.

Debt and child support considerations

Applicant accrued considerable consumer debts during the first few years of his struggling marriage. Financial strains associated with separation from his father-in-law's business and unsuccessful efforts to start his own business prevented him from staying up with his old debts. After unfruitful attempts to work with some of his creditors, he petitioned for bankruptcy in 2003. His bankruptcy petition remains a work in progress, however, as he has yet to document a discharge in bankruptcy. Without a discharge, he is prevented from making the persuasive case his old debts are discharged. Whether he will be able to obtain the discharge he seeks requires considerable speculation.

At the present, Applicant remains obligated, jointly and severally, on his old consumer debts that still exceed $18,000.00 in the aggregate. Compounding security concerns over these still uncharged debts is his significant child support arrearage. By the time X sought court assistance in 2003 to enforce collection of child support from Applicant, the accumulated arrearage exceeded $11,000.00. While claims surprise that X would ignore the support payments he

had been making over the previous four years, he shouldn't be surprised. The payments he documents making to X between 1996 and 2002 total less than $2,200.00, more only if the payments he claimed he made but couldn't document (because of records reportedly lost in a 1996 burglary) are factored in. By even the higher payment levels claimed by Applicant, they still amount to less than $50.00 a month over the six year period in issue. This $50.00 a month track record represents just a fraction of the $250.00 monthly child support ordered by the chancery court hearing X's petition, and provides a plausible explanation for why X went to court to seek child support from Applicant.

On the strength of the evidence presented, Government may invoke two Disqualifying Conditions (DC) of the Adjudicative Guideline for financial considerations: DC 1 (history of not meeting financial obligations) and DC 3 (inability or unwillingness to satisfy debts).

Applicant claims considerable mitigation of both his accumulated consumer debts and his child support arrearage by the combination of a pending bankruptcy petition and court-imposed pay deductions of $400.00 a month until such time the arrearage is satisfied. He commits to a further reduction of his support arrearage by application of his expected tax refund to the arrearage. At the present, though, it is uncertain Applicant will receive a formal discharge of all of his scheduled debts in his bankruptcy. And it is less than clear he will receive the $4,852.00 refund he claims on his 2003 federal tax return. At present, Applicant remains indebted to W on his child support arrearage for more than $9,000.00, after crediting him with the payroll deductions that have been applied to date to his child support arrearage. Further draw downs on all of Applicant's accumulated debts require acceptance of Applicant's promises to follow through.

Over time, our Appeal Board has shown general consistency in discounting promises to take repayment actions in the future when resources become available. *Cf.* ISCR Case No. 99-0012 (December 1, 1999); ISCR Case No. 98-0188 (April 29, 1999). Put another way, the assumed possibility an applicant might achieve resolution of his outstanding debts at some future date is not a substitute for a worthy track record of remedial actions, or evidence of financial reform or rehabilitation in the present. *Cf.* ISCR Case No. 98-0614 (July 12, 1999).

Security clearance decisions are, of course, never an exact science, but rather involve predictive judgments about a person's security eligibility based on the person's past conduct and present circumstances. *See Department of Navy v. Egan,* 484 U.S. 518, 528-29 (1988). Without any documented assurance of a bankruptcy discharge or credited application of his expected 1993 tax refund to his arrearage at this time, Applicant lacks the probative mitigation necessary to absolve him of the pressure and judgment risks associated with being significantly in debt.

While Applicant may take advantage of MC 3 (conditions largely beyond the person's control) of the Adjudicative Guidelines to extenuate some of his debt delinquencies, and to some extent (MC 4 (the person has received or is receiving counseling for the problem), he may not fully invoke the mitigating provisions of MC 6 (initiated good-faith effort to repay overdue creditors), absent more concerted efforts to address his old creditors to date. Considering all of the circumstances surrounding his personal finances and child support arrearage, and the efforts he has taken to date to address them, mitigation is not yet available to him. Unfavorable conclusions warrant, accordingly, with respect to subparagraphs 3.a through 3.f under Guideline F.

In reaching my decision, I have considered the evidence as a whole, including each of the factors set forth in the Procedures section (paragraph 6) of the Directive, as well as E.2.2 of the Adjudicative Process of Enclosure 2 of the same Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE J (CRIMINAL CONDUCT): AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

GUIDELINE D (SEXUAL BEHAVIOR): AGAINST APPLICANT

Sub-para. 2.a: AGAINST APPLICANT

Sub-para. 2.b: AGAINST APPLICANT

Sub-para. 2.c: AGAINST APPLICANT

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Sub-para. 3.a: AGAINST APPLICANT

Sub-para. 3.b: AGAINST APPLICANT

Sub-para. 3.c: AGAINST APPLICANT

Sub-para. 3.d: AGAINST APPLICANT

Sub-para. 3.e: AGAINST APPLICANT

Sub-para. 3.f: AGAINST 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 Applicant's security clearance. Clearance is denied.

Roger C. Wesley

Administrative Judge