

DATE: January 31, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-06935

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

John B. Glendon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owes about \$8,646 in delinquent debt, incurred after a bankruptcy discharge. He was unemployed for about a year when he had a sizeable child support obligation to repay, but financial considerations persist where he has made little effort to address these debts. Applicant has not adequately documented expenses that he maintains have prevented him from resolving these debts. Clearance is denied.

STATEMENT OF THE CASE

On January 25, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons under Guideline F, financial considerations, 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. [\(U\)](#)

On February 15, 2006, Applicant answered the SOR and requested a hearing before a DOHA administrative judge. The case was assigned to me on May 25, 2006, with a motion pending from the government dated May 17, 2006, to amend the SOR to identify the creditors allegedly owed the debts in SOR ¶¶ 1.a, 1.b, and 1.c. A hearing was convened on August 2, 2006, pursuant to formal notice dated June 30, 2006. Before the introduction of any evidence, the SOR was amended per the government's motion, Applicant having no objection. Six government exhibits (Ex. 1-6) and one Applicant exhibit (Ex. A) were admitted and testimony was taken from Applicant, as reflected in a transcript received on August 11, 2006.

FINDINGS OF FACT

Applicant was alleged under Guideline F to owe \$8,283 in debt delinquent as of October 2005. Applicant admitted the debts with the exception of ¶ 1.f, which he contended was a duplicate account with ¶ 1.g. Applicant's admissions to unpaid delinquent debt are incorporated as findings of fact. After a thorough review of the evidence, I make the

following additional findings.

Applicant is a 51-year-old electronic technician/assembler, who has worked for his current employer, a defense contractor, since January 2004. He seeks a security clearance for his duties.

Applicant married in November 1975 when he was 20 years old. Three days later, he entered on active duty in the United States Air Force. He was honorably discharged after only 21 days at his request when the service did not honor its guarantee that he would be trained as an aircraft mechanic. Applicant subsequently went to work for a defense contractor, and he was granted a confidential-level security clearance for his duties in about 1983.

In August 1988, Applicant and his spouse divorced. He began to experience financial difficulties due to the costs of maintaining two households and paying child support at \$250 per week for his three children.⁽²⁾ In later years, his child support dropped to \$150 per week.

In October 1988, Applicant married his current spouse. He took on her surname, although he subsequently filed for bankruptcy under his birth name as his tax documents were under his birth name. About \$20,000 in debt was discharged in the bankruptcy, which did not include the child support that was taking a third of his paycheck.

From June 1991 to May 1994, Applicant was employed as an inspection supervisor. Over the next five years, he worked in a succession of full-time inspection jobs for six different employers, earning no more than \$12 per hour. He started as a temporary employee but in some cases became permanent before he was laid off ("companies were closing behind me, as I was going through them." Tr. 42). For 19 months from March 1999, he worked as a diffusion operator, and from October 2000 to October 2001, as a wafer fabrication technician. Child support was automatically deducted from his paycheck when he was working, but he fell behind on a few accounts. Two medical debts incurred at a local hospital in April 2000 and September 2000 (¶¶ 1.c and 1.a, respectively) were placed for collection in September 2000 with unpaid balances of \$50 each. In January 2000, Applicant incurred a veterinary bill of about \$1,500 for the care of his dog that was placed for collection in September 2000 with an unpaid balance of \$243 (¶ 1.b).

Applicant was unemployed from about October 2001 to September 2002. His unemployment compensation was garnished at \$150 weekly for child support,⁽³⁾ but he fell behind in his child support ("there was [sic] times when I was unemployed where I couldn't make the payments. Then when they caught up with me, they started taking the money out . . ." Tr. 86). He accumulated a substantial child support arrearage that he finally paid off in December 2005.

Applicant relied on consumer credit to cover living expenses when he was unemployed. He made a few payments on the accrued debt after he began working again in September 2002, but some accounts were charged off and/or placed for collection. A charge account that Applicant claims he never applied for but was sent to him to use in or before June 2001, was charged off with \$438 past due. (¶ 1.e) In July 2001, he bought nautilus equipment (a "Bowflex") on credit. A debt of \$1,917 was placed for collection in 2003 (¶ 1.g). A credit card account was placed for collection in October 2002 in the amount of \$3,106 (¶ 1.f).⁽⁴⁾ In April 2003, about eight months into his job as a process technician for a defense contractor, Applicant incurred retail credit charges over the course of two days that were subsequently charged off in August 2003 due to nonpayment in the amount of \$351 (¶ 1.d).⁽⁵⁾

On December 31, 2003, Applicant completed a security clearance application (SF 86), which he subsequently signed on January 13, 2004. He listed balances of \$256 on ¶ 1.d, \$500 on ¶ 1.e, and \$3,000 owed to Citi Cards (¶ 1.f) in response to question 38 concerning any delinquencies over 180 days within the last seven years and question 39 concerning any debts currently over 90 days delinquent. He added that the debts had been incurred due to unemployment and he was working with Citi Cards to resolve that debt. About 12 days after he filled out his SF 86, he left that job for his position with his current employer due to the career opportunities and a higher wage (from \$17 to \$18.50 per hour).

On March 28, 2005, Applicant was interviewed about his debts by an Office of Personnel Management (OPM) special investigator. Applicant indicated that he had made his last child support payment the week before and was no longer obligated to pay child support as his children were over 18. He admitted he had taken on too much credit card debt since 1988, although he was no longer relying on credit. Applicant acknowledged incurring the debts in ¶¶ 1.a, 1.b, 1.c, that he planned to pay within the next week; a \$3,654 debt to Citibank (¶ 1.f) that he would arrange to repay as soon as he

could; the credit card debt in ¶ 1.e that he had to stop paying on after he got laid off but expected would be paid within the year; a \$1,500 debt for a Bowflex (¶ 1.g) that he claimed to have made payments on until he was laid off; and the debt in ¶ 1.d. He averred he was in a position to address his delinquent obligations and that he had been paying on debts for the past six months. Applicant provided a personal financial statement, estimating a net remainder of \$1,062 per month given his and his spouse's salaries, exclusive of any payment on his delinquent accounts. Applicant now submits he did not have those discretionary funds to pay his debts, as he had other expenses, such as car repair costs of \$1,500 (Tr. 65), that were not included (Tr. 55).

A check of Applicant's credit on October 11, 2005, revealed he had made no progress toward resolving the outstanding debts. In October 2005, DOHA asked Applicant to provide updated information regarding their status in financial interrogatories. Applicant provided a personal financial statement estimating an inaccurate net monthly remainder of \$2,180. He had underestimated his utility and grocery costs, and had listed only his share of the mortgage. Applicant expressed an intent to pay the debts in the future, probably after the first of the year.

In December 2005, Applicant finished paying his child support arrearage. On January 25, 2006, DOHA issued an SOR alleging financial considerations concerns because of the unresolved debts. Applicant contacted a debt counseling firm referred to him by his employer's employee assistance program (EAP) on or before February 11, 2006. In a telephone consult of February 17, 2006, the debt counseling firm proposed a plan to Applicant to pay \$350 per month, which Applicant indicated was unaffordable. The company offered to work with him to resolve his debts at a lower monthly payment once he paid off his smaller debts.

Checks of Applicant's credit on May 12, 2006, and on July 28, 2006, revealed no progress in resolving his delinquent debts (¶ 1.a \$50, ¶ 1.b \$243, ¶ 1.c \$50, ¶ 1.d \$383, ¶ 1.e \$607, and ¶ 1.g \$2,375). The debt in ¶ 1.f was not listed on the credit reports, either under the name of the original creditor or the collection agent. Included on the July credit report was a new collection debt placed in March 2006 for \$162.

As of his August 2006 hearing, Applicant he had not paid his two medical debts (¶¶ 1.a and 1.c) as he was waiting for verification from the hospital as to when the debts were incurred and of his responsibility for them. Applicant has not followed up with the hospital since December 2005 ("I work a weird shift and I really don't have much time on my hands." Tr. 49). He had not satisfied the remaining balance of the veterinary bill (¶ 1.b) due to claimed roof problems in 2003/04 and basement flooding in spring 2006 that took priority. He had not paid on his other debts, including the debt in ¶ 1.f (Tr. 60), because of "too many problems" (Tr. 50). He testified he put \$6,000 into his cars for repairs in 2006 alone (Tr. 83), but indicated he was unable to document those payments ("But I don't know if I have all those records because usually the work is done and I don't keep the records for them." Tr. 84) He conceded he may well owe the debt for the Bowflex (¶ 1.g), but contends he had insurance on the credit card that should have covered his debt once he stopped making payments (Tr. 58). Applicant had not followed through with any payments to the debt consolidation firm (Tr. 72), although in early July 2006, Applicant "put in a bid" through the web with a company for a \$10,000 loan to pay off all his debts (Tr. 79-80). No loan had been approved as of early August 2006. He denied any delinquencies other than those listed in the SOR until he was asked about the satellite television service debt reported on his July 2006 credit report. He expressed his intent to pay the \$162 debt within the week. He cancelled his satellite television service that he had for two years off-and-on due to lack of reception.

Applicant earns \$19.99 per hour for his work with the defense contractor. His spouse earns \$21 per hour for the same employer. They commute together as they work the same shift. She owns the home they live in. Applicant pays half of her \$989 monthly mortgage payment as well as half of the groceries, which he estimated at between \$800 and \$1,000 per month for the two of them. As of August 2006, they were not earning any overtime income. Applicant had no active credit card accounts, no savings account, and no checking account. His spouse had about \$1,100 in her checking account and \$53 in her savings account. He testified that if he has \$1,500 left over each month he is "doing good" as he has to pay for heating oil (Tr. 77). When asked whether he could pay off his delinquent debt of \$8,646 within a reasonable time, Applicant responded:

No, the small debt, I haven't even, I haven't bothered to even try because every time I try to get a little money put away, something major happens and the economy has like really done a job on us with the cost for utilities in the home and to get back and forth to work, keeping the car repaired. I will pay these off. That's not a problem, I don't want to leave

these debts sitting forever because there is no reason for that. I've kept all my current bills current, which is really good, considering, but I would like to get all these little ones paid off and let [name of debt counseling company omitted] help me with the rest, or acquire, which I'm [sic] the process right now of trying to acquire a loan to take care of all the big ones, and get rid of them in one lump sum and making a monthly payment, which will be a lot easier for me.

But either [name of debt counseling company omitted] or a loan, either one, I'm going to get these paid off, I need to get them paid off. It probably won't be by the end of this year, probably by the [sic] early next year, not paid off but at least started. (Tr. 78-79)

Applicant's spouse has a website selling toys and sterling silver. It costs them \$24 per month to run the website and has not brought them any income with the exception of \$20 in late July 2006 (Tr. 89).

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel 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 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.

CONCLUSIONS

Guideline F--Financial Considerations

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds (¶ E2.A6.1.1). Applicant incurred about \$20,000 in debt during his first marriage that was discharged in bankruptcy shortly after he married his second wife in 1988. After being laid off in October 2001, he was unemployed for about one year. He fell behind in his child support, did not make his payments on the nautilus equipment purchased in 2001 or on the medical/veterinary bills incurred in 2000, and ran up consumer credit card debt of more than \$3,000 paying for living expenses (¶ 1.f). After he began working in September 2002, he abused credit extended to him by a retailer (¶ 1.d). While his wages were garnished to pay his child support and the accumulated arrearage, he has made little, if any effort, to resolve the debts in the SOR. As of August 2006, he owes delinquent debt of about \$8,646, including a \$162 satellite television debt placed for collection in March 2006 after the SOR was issued. 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 implicated.

Applicant's financial situation was negatively affected by his job layoff and sizeable child support obligation. He also had to put a new roof on the house in 2003 or 2004.⁽⁶⁾ Mitigating condition (MC) ¶ 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)* must be considered, but it does not apply to his failure to make timely efforts in 2005 and 2006 to address his debts, when according to the available record, he should have had the discretionary funds available. With his change of employers in January 2004, Applicant's hourly wage increased from \$17 to \$18.50. In later years, his child support obligation decreased from \$250 to \$150 per week, which

netted him an additional \$400 per month. Even if most of it went to satisfy his arrearage, he made his last child support payment sometime in 2005. In arch 2005, he averred he had the means to satisfy his debts, and reported his and his spouse's joint income exceeded their expenses by \$1,062. In October 2005, he reported an inaccurate monthly remainder of \$2,180, as he underestimated utility costs at only \$50, \$400 for groceries, and \$494 (his share only) for the mortgage. Yet assuming utility costs were similar to March 2005 (\$453), grocery costs of \$800 (Tr. 75-76), and the full mortgage (\$989), Applicant would have had about \$800 in discretionary funds to pay toward his indebtedness each month. Small debts of as little as \$50 (¶¶ 1.a and 1.c) went unpaid while at the same time he was paying between \$100 and \$120 per month for satellite television service. His exhibited tendency to place his personal interest ahead of his obligation to his creditors reflects adversely on his judgment.

Applicant asserts that despite an increase in his hourly wage, he is presently unable to afford the \$350 payments under the debt consolidation plan proposed to him in February 2006. In July 2006, he opened an account with an online service in an effort to secure a \$10,000 loan to pay off his debt. The burden is on Applicant to prove that his delinquencies persist because of unexpected financial costs rather than disregard. He testified he spent \$6,000 on vehicle repairs in 2006 but presented no documentation confirming dates and amounts of any payments. Corroboration is especially vital in this case where Applicant has provided conflicting evidence as to the extent of some of his obligations and when they incurred (*e.g.*, child support arrearage of \$3,000 or \$7,000; roofing costs over the past year and a half (Tr. 49) or two years, three years ago (Tr. 88); his vet bill was for the dog after he went to work for his current employer (Tr. 27) although credit reports show the debt was placed for collection in 2000 (Exs. 4, 5, 6); living expenses such as phone, cable, have been kept current (Tr. 28) when the satellite television service debt was in collection (Ex. 6). Furthermore, recent inquiries into debt consolidation and attempts to secure a loan are too preliminary at this stage to meet ¶ E2.A6.1.3.4. *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.* Applicant did not follow through on his intent in March 2005 to pay off the veterinary and hospital bills within the week following his interview, and other debts (¶¶ 1.e and 1.g) within the next year. He has not shown the good faith required for ¶ E2.A6.1.3.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*

Whole Person Analysis

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." ¶ E2.2.1. Although his financial problems started because of unemployment when he had a sizeable child support obligation, he also abused credit. His failure to take timely steps to address his delinquent debts raises ongoing concerns for his financial judgment and reliability (*see* ¶ E2.2.1.3. *The frequency and recency of the conduct*; ¶ E2.2.1.4. *The individual's age and maturity at the time of the conduct*). Applicant asks that he be allowed to retain his job, as without his income, he will be unable to resolve his debts. A promise to attend to his debts at some future time does not constitute evidence of reform (¶ E2.2.1.6. *The presence or absence of rehabilitation and other pertinent behavioral changes*). Moreover, given his track record in this area, including his failure to make the payments he promised in March 2005, I have little confidence that he will satisfy his delinquent debts in the near future.

Assuming the debts are eventually paid off through a \$10,000 loan or debt consolidation, future financial difficulties cannot be ruled out. There is no evidence that Applicant continues to rely on consumer credit, but he became seriously delinquent on a satellite television service debt in 2006. He continues to operate a website with his spouse that costs him \$24 per month with little to no positive return, even as he claims to lack the funds to satisfy his old debt. After considering the available record, I am unable to conclude that it is clearly consistent with the national interest to grant him access.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: 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 a security clearance for Applicant. Clearance is denied.

Elizabeth M. Matchinski

Administrative Judge

- 1.
2. Applicant did not list his children on his security clearance application (Ex. 1) and could not recall their dates of birth at his hearing. He has not seen them in over 20 years. (Tr. 35)
3. Applicant told the OPM investigator in March 2005 that his child support obligation was \$215 per week. (Ex. 2). He testified at his hearing that his child support was \$250 per week when he was on unemployment (Tr. 86) The record evidence is discrepant as well on the accumulated arrearage. Applicant told the OPM investigator the most he owed was "a little over \$3,000," and he made his last payment in March 2005. At his hearing he testified the arrearage was \$7,000 (Tr. 86) and he paid on that arrearage until December 2005. (Tr. 35)
4. Although Applicant contended that the debts alleged in SOR ¶ 1.f and ¶ 1.g were the same account, his credit report of October 11, 2005, lists two separate collection accounts on which he owed \$4,776 (¶ 1.f) and \$2,375 (¶ 1.g). The credit reports (Ex. 4 and Ex. 5) show the creditor assignee in ¶ 1.g is collecting an unpaid HSBC (Household Bank) debt. That creditor extended \$1,917 in credit to Applicant, which matches the original balance of the collection account in ¶ 1.g. The original creditor of the \$4,776 debt (¶ 1.f) is not listed in the credit reports. It is likely the Citibank account Applicant detailed in his affidavit of March 28, 2005 (Ex. 2). Applicant admitted in March 2005 that he had an outstanding balance of \$3,654 on that account. His October 11, 2005, credit report (Ex. 4) indicates a debt of \$3,106 was placed for collection with the assignee in ¶ 1.f three years earlier. Applicant now concedes the assignee in ¶ 1.f could be a collection agent for the Citibank account, as he has made no payments on the Citibank debt. (Tr. 60)
5. Applicant testified he was given a gift credit card authorizing charges up to \$250 to be repaid in monthly installments. He made "maybe three payments" on the account and nothing since August 2003. (Tr. 51-52)
6. Applicant initially attributed his failure to pay off the veterinary debt to "everything that's occurred over the last year and a half, with floods and roof problems in the home." (Tr. 49) When asked specifically about unexpected expenditures within the past year, Applicant responded, "the roof was two years, was three years ago." (Tr. 88)