

DATE: April 17, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR OSD Case No. 96-0469

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR THE GOVERNMENT

Carla Conover, Esquire

Department Counsel

FOR THE APPLICANT

Pro Se

STATEMENT OF THE CASE

On 2 December 1996, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 27 December 1996, Applicant answered the SOR and requested an administrative decision on the record. Applicant did not respond to the Government's File of Relevant Material (FORM)--issued 9 January 1997; the record in this case closed 23 February 1997, the day the response was due at DOHA. The case was originally assigned to a different administrative judge, but was reassigned to me because of workload considerations on 11 April 1997. I received the case on 14 April 1996 to determine whether clearance should be granted, continued, denied or revoked.

The SOR is attached to this Decision and incorporated by reference.

FINDINGS OF FACT

Applicant admitted all the allegations of the SOR; accordingly, I incorporate those admissions as findings of fact.

Applicant is a 47-year old employee of a defense contractor seeking a confidential clearance.

Applicant has a history of financial irresponsibility. In 1972 or 1973, Applicant's bills got out of hand; he fell behind in his payments and had his car repossessed. He later filed for bankruptcy. (FORM, Item 5). In the early 1990s, Applicant again began to experience financial difficulties: in October 1990, one creditor charged off a debt of \$320.00 (subparagraph 1.e.); in April 1991, a second creditor charged off a debt of \$2,883.00 (subparagraph 1.c.); on 16 October

1991, a third creditor obtained a judgement for \$71.84 plus costs (subparagraph 1.f). In 1992, Applicant went through a divorce, was in a motorcycle accident, and lost his job. Between 1992 and June 1995--when he went to work for his present employer--three debts were charged off (subparagraphs 1.a., b., d.); four went into collection (subparagraphs 1.h., i., k., m., n); and three were reduced to judgment (subparagraphs 1.g., j., l.). Of the fourteen debts alleged in the SOR, Applicant has stated an intent to not pay ten creditors whose debts total approximately \$16, 218.00 (subparagraphs 1.c., d., e., h., i., j., k., l., m., n.)(FORM, Item 6; Answer). He has stated an intent to pay--at some undefined time in the future--two creditors owed less than \$100.00 each (subparagraphs 1.a., f.) and one creditor owed an undetermined amount (subparagraph 1.b.). Applicant intends to pay one creditor (subparagraph 1.g.) who has obtained a judgment on Applicant's motorcycle.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

FINANCIAL CONSIDERATIONS (CRITERION F)

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.

Conditions that could raise a security concern and may be disqualifying include:

- (1) a history of not meeting financial obligations;
- (3) inability or unwillingness to satisfy debts;

Conditions that could mitigate security concerns include:

- (3) the conditions that resulted in the behavior were largely beyond the person's control (e.g, loss of employment. . . divorce).

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

The Government has established its case under criterion F. The record evidence clearly establishes Applicant's

indebtedness and his irresponsible handling of that indebtedness. While the Applicant's divorce and loss of employment in 1992 provides some explanation for many of his debts, those explanations do not apply to three debts which had become past due before those events. Further, his divorce and loss of employment may serve to explain why many of Applicant's accounts became delinquent in 1992 and 1993, but they do not explain why accounts continued to fall into delinquency after 1994--when Applicant was again employed. Nor do they explain why Applicant has not made any efforts to satisfy any of these debts after obtaining better employment in June 1995. Applicant's Answer to the SOR claims that for several years after his divorce, motorcycle accident, and loss of job, he felt sorry for himself and did not care about anything; he claims in the past year to have started to get his life back together again. Yet, getting his life back together has not included addressing his indebtedness in any meaningful way. He asserts payment of debts--not alleged in the SOR--but provides no corroboration. Further, other mitigating factors which might come to his aid are not available: his irresponsible behavior is recent; with fourteen past due accounts, his behavior is certainly not isolated; and most important, he has not initiated good-faith efforts to repay overdue creditors or otherwise resolve his outstanding debts. I find criterion F. against Applicant.

FORMAL FINDINGS

Paragraph 1. Criterion F: Against THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

Subparagraph k: Against the Applicant

Subparagraph l: Against the Applicant

Subparagraph m: Against the Applicant

Subparagraph n: 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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, dated January 2,

1992--and amended by Change 3 dated 16 February 1996 (Directive).