

DATE: June 3, 1997

In Re:

SSN: -----

Applicant for security clearance

ISCR Case No. 96-0861

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

Appearances

FOR THE GOVERNMENT

Peregrine Russell-Hunter, Esq.

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF CASE

On December 2, 1996, 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, and amended by Change 3, February 13, 1996, 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 denied or revoked. The SOR is attached. Applicant filed his Answer to the SOR on December 20, 1996.

The case was received by the undersigned on February 27, 1997. A notice of hearing was issued on March 31, 1997, and the case was heard on April 15, 1997. The Government and Applicant submitted documentary evidence. [\(1\)](#) Testimony was taken from Applicant. The transcript was received on May 2, 1997.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the testimony. The SOR alleges financial matters. (Criterion F) Applicant admitted all factual allegations except for subparagraph 1n, which alleges Applicant's monthly remainder is \$900 after payment of all expenses. (GE #2, personal financial statement) He testified his monthly remainder decreased since he provided the information in his August 1996 sworn statement because of cost of living increases. (Answer; Tr. 17) Applicant's dispute over the monthly remainder of his income does not change the fact that as of August 29, 1996, he still had made no effort to resolve his indebtedness. The ultimate finding against Applicant under subparagraph 1n is based on his inaction for more than five years to settle his

financial quagmire and that the action he did take is too little too late.

Applicant is indebted to thirteen creditors (listed in the SOR) for the following amounts: (1) creditor #1 since March 1991 for \$1700; (2) creditor #2 since arch 1991 for an unpaid balance of \$3,522; (3) creditor #3 for an unpaid account balance of \$1074 since September 1991; (4) creditor #4 for an unpaid account balance of \$427 since September 1991; (5) creditor #5 for approximately \$5200 since November 1991; (6) creditor #6 for \$5500 since November 1991; (7) creditor #7 for unpaid child support of \$16,640 since May 1992; (8) creditor #8 for \$369 since August 1992; (9) creditor #9 for an unpaid account of \$710; (10) creditor #10 for an unpaid balance of \$116 since March 1993; (11) creditor #11 for an unpaid balance of \$18,749; (12) creditor #12 for an unpaid balance of approximately \$70 since about April 1994; and, (13) creditor #13 for a deficit balance of \$7,373 due for a repossessed auto turned over for collection in July 1994. The indebtedness on the thirteen accounts is \$61,450.

Credit bureau reports (CBRS - GE #3 & GE #4) of July 1996 and April 1997, confirm the debts identified in the preceding paragraph.⁽²⁾ In his sworn statement dated August 29, 1996 (GE #2), Applicant acknowledged all the debts identified in the SOR. In addition, just before providing the sworn statement, he learned from the domestic relations court that he would have to pay \$194 a month in child support. He also said he had a manageable plan plus all full intention to pay all the debts.⁽³⁾

Applicant blamed his former wife for his financial problems but admitted both were responsible for the debts. (Tr. 25) They were married in 1988 and had a child in approximately 1990. Her high standard of living drove her spending sprees which he could not control, even after he took complete charge of all the finances.⁽⁴⁾ She had high levels of credit on her credit cards. The financial problems continued to deteriorate and so did their marriage. Their communication broke down and she announced she was going to divorce him. He finally left her in May 1991 because she threw him out on the street with no car and no clean clothes. (GE #2) She told him she did not want to have anything to do with him and that he should not attempt to contact her. (Tr. 33)⁽⁵⁾

While living with his sister in the ----- for the next 60 days, he received some papers in June or July 1991 from his former wife's attorneys. (Tr. 28) He believed the papers, which requested information about his income and expenses, related to the debts he and his former wife owed (Tr. 34), but he had no idea of any specific purpose of the papers, i.e., to pay child support. Until he received the divorce decree dated May 15, 1992, which was just before he provided a sworn statement to the Defense Investigative Service (DIS) in August 1996, Applicant did not know he had to pay child support. (Tr. 35)

Considering the entire record, including Applicant's demeanor and conduct at the hearing, I find Applicant's credibility is undermined by his inability to furnish any supporting documentation (except payments under the repayment plan), even though requested. (Tr. 70-71)⁽⁶⁾ Furthermore, throughout his testimony, Applicant portrayed himself as continuously poor and never having any money until he was hired at his present job in April 1995. It should be noted that Applicant was not as destitute after he left his former wife as he testified because he was able to purchase an auto on an installment plan just after he moved back to the Midwest in May 1991. (Tr. 38)⁽⁷⁾

Second, Applicant made no payments to any listed or unlisted creditors between May 1991 and February 1997. In support of his stated claim in GE #1 (April 18, 1995) that he had been making restitution on the bills caused by the divorce, Applicant testified he had been paying the doctor and other little bills that are not listed in the SOR. (Tr. 37; 82). Yet, in his sworn statement in August 1996, Applicant made no reference to paying any of his creditors, whether listed in the SOR or not. (GE #2). Furthermore, he provided no supporting documentation of his payments to unlisted creditors even though requested to do so. (Tr. 70) However, the strongest evidence of the fact no bills were paid is Applicant's admission he did not even attempt to determine what his overall indebtedness was until the summer of 1996.⁽⁸⁾ (Tr. 32)

Third, when Applicant received the papers in June or July 1991 requesting information about his income, he knew or should have known he had a responsibility to pay child support.⁽⁹⁾ His belief he had no obligation to pay child support (Tr. 34) or any other bill (Tr. 33), is unreasonable.

Applicant indicated he is employed at his highest paying job that will give him the opportunity to take charge of his financial obligations. The debt repayment plan, deposit history reflects that Applicant has made six deposits between February and April 21, 1997. (Applicant's Exhibit D).

POLICIES

Enclosure 2 of the Directive sets forth policy factors which must be given binding consideration in making security clearance determinations. These factors must be considered in every case according to the pertinent criterion; however, the factors are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the entire realm of human experience or that the factors apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Factors most pertinent to evaluation of the facts in this case are:

Financial Considerations (Criterion F)

Factors Against Clearance:

1. a history of not meeting financial obligations.
3. inability or unwillingness to satisfy debts.

Factors for Clearance:

None.

General Policy Factors (Whole Person Concept)

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at page 2-1 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 behavioral changes; (7) the motivation for the conduct; and, (8) the likelihood of continuation or recurrence.

Burden of Proof

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information in the future. The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must establish all the factual allegations under Criterion F (financial considerations) which establishes doubt about a person's judgment, reliability and trustworthiness. A rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, but objective or direct evidence is not required. Then, the applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation which demonstrates that the past adverse conduct is unlikely to repeat itself and Applicant presently qualifies for a security clearance.

CONCLUSIONS

The Government has established a case of financial considerations under Criterion F. Between Applicant's separation from his wife in May 1991, and his first partial payment in February 1997 as a part of the repayment plan which he entered on December 18, 1996, Applicant incurred financial indebtedness from 13 creditors totaling more than \$61,000. When he returned some paperwork to his former wife's attorneys in June or July 1991, he should have known at that time he had an obligation to pay child support and taken some kind of affirmative action to address the other debts. The record shows that for more than five years he nothing. The first significant action he took was not until December 18, 1996, which was two days before he answered the SOR. Waiting for more than five years until the middle of a security investigation raises a distinct cloud of suspicion about the genuineness of Applicant's efforts to repay his long overdue creditors and whether he will maintain compliance with the repayment plan into the foreseeable future.

As noted in Findings of Fact, there is no evidence to corroborate Applicant's statement in April 1995 that he was making restitution on the debts caused by the divorce. The fact he did not mention he was paying on any bills in his sworn statement of August 1996, together with the lack of any documentary evidence to support Applicant's testimonial claims of paying the doctor and other bills not listed in the SOR, raises even larger doubts about whether Applicant will stick with his present plan.

Concerning the entire record, particularly the inaction by Applicant for over five years, and the absence of any the favorable character evidence, I conclude Applicant's efforts to take control of his financial profile have come very late and are insufficient to overcome the extensive evidence of financial problems since arch 1991.

FORMAL FINDINGS

After a review of the Financial Consideration policy factors and the general policy factors (whole person concept) identified in POLICIES, Formal Findings required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1 (Financial Considerations): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.
- h. Against the Applicant.
- i. Against the Applicant.
- j. Against the Applicant.
- k. Against the Applicant.
- l. Against the Applicant.
- m. Against the Applicant.
- n. Against the Applicant.

Factual reasons for the foregoing findings are set forth in FINDINGS OF FACT and CONCLUSIONS, above.

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.

Paul J. Mason

Administrative Judge

1. Applicant submitted a one page post-hearing exhibit which shall be marked and admitted in evidence as Applicant's Exhibit D.
2. Both CBRS identify the creditors, the respective amounts, and the last (most recent) action taken on each debt. The most recent action taken on any one of the thirteen debts was in April 1994 involving creditor #12. The most recent action taken on all the other debts was June 1993 and before.
3. But, he did not say he was paying any debts as he stated in his National Agency Questionnaire (NAQ), where he stated he was making restitution on debts as a result of the divorce. See, GE #1.
4. He took her checkbook and kept track of everything, and paid the bills. (Tr. 76).
5. He thought he did not owe her anything as a result of her parting comments to him.
6. Applicant provided no evidence to support his testimony of recently making costly car (Tr. 82), even though requested to do so. (Tr. 71).
7. Although the car was repossessed two years late in June 1993.
8. Because of the delay in receiving his security clearance, Applicant thought his indebtedness could be a problem. Hence, he obtained a copy of his May 1992 divorce decree to get information on his indebtedness. (Tr. 35).
9. Obviously, his former wife's remarks just prior to his departure were made during the heat of a marital argument and clearly do not eliminate or even modify Applicant's ongoing legal responsibility as a parent to at least support the child or the child's legal right to support. More importantly, Applicant provided no evidence supporting his testimony of beginning child support payments in October 1996. (Tr. 52).