

DATE: July 31, 1997

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In re:

SSN:

Applicant for Security Clearance

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ISCR OSD Case No. 97-0016

## **DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

### **APPEARANCES**

#### **FOR THE GOVERNMENT**

Matthew E. Malone, Esq.

Department Counsel

#### **FOR THE APPLICANT**

Craig M. Rappel, Esq.

### **STATEMENT OF THE CASE**

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, as amended by change 3, issued a Statement of Reasons (SOR) dated January 24, 1997, to the 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 the Applicant and recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked.

A copy of the SOR is attached to this Decision and included herein by reference.

On February 13, 1997, Applicant, acting *pro se*, responded to the allegations set forth in the SOR and requested a hearing. The case was assigned accordingly to an Administrative Judge on March 7, 1997, and transferred to the undersigned on April 16, 1997, due to workload considerations. On April 17, 1997, a hearing was scheduled in this matter for May 21, 1997. On April 28, 1997, counsel for Applicant moved for a continuance due to a schedule conflict. With the agreement of counsel for the Government and Applicant, on May 13, 1997, the undersigned issued an Amended Notice of Hearing rescheduling the hearing for ay 23, 1997. At the hearing, which was held on May 23, 1997, eight Government exhibits and seven Applicant exhibits were admitted into evidence and testimony taken from the Applicant. <sup>(1)</sup> A complete transcript of the hearing was received by this office on July 29, 1997. <sup>(2)</sup>

### **FINDINGS OF FACT**

After a thorough review of the evidence in the record, and upon due consideration of same, this Administrative Judge renders the following findings of fact:

Applicant is a 42 year old ----- who has worked for his current employer (company A), most recently since March 14, 1988. He seeks to retain a Secret security clearance which was granted to him for his duties there on March 20, 1990.

Applicant previously worked for company A from June 10, 1985 to April 4, 1986. On or about March 11, 1986, Applicant sustained a work related injury to his lower back. Following his layoff in April 1986, Applicant over the next two years took some menial jobs which paid minimum wage. He began to experience financial problems which were compounded following his marriage in November 1988 due to his wife's debts, which included a second mortgage. Despite returning to work at company A in March 1988, Applicant did not make an effort to repay those debts which had become delinquent, as follows:

Sometime in the 1984/85 time frame, Applicant bought a used ----- automobile, financing the purchase through a bank (creditor #1).<sup>(3)</sup> After he got laid off, he stopped making payments and the car was subsequently repossessed and resold. In April 1990, creditor#1 obtained a judgment against Applicant in the amount of \$7,214.00 which represented the delinquent balance on the loan following the repossession and resale. Aware of the court judgment against him, Applicant made no payments on the judgment as the car had a variety of mechanical problems.

Circa December 1988, Applicant joined a health club with his spouse, by means of an individual installment loan from a finance company (creditor #2) . In July 1990, the account was refinanced with his monthly payment rising from \$11.00 to \$18.00.<sup>(4)</sup> In April 1991, the creditor \*obtained a judgment against Applicant in the amount of \$927.00. Applicant has not made any payments on that judgment.

On January 9, 1989, Applicant obtained medical services from a local hospital (creditor #3) related to the back injury suffered at work in 1986. Because the injury was related to an ongoing workmen's compensation claim, Applicant rightly assumed that the insurer would be responsible for the bill and he made no payment toward a \$304.00 debt which was turned over for collection by the hospital on May 5, 1989. By letter dated March 19, 1997 (App. Ex. G), the insurer requested the collection agency submit the bills to it for payment.

Applicant injured his hand while cleaning fish on November 28, 1989, requiring medical attention at a local hospital (creditor #3). Applicant failed to pay for the medical services rendered and on January 29, 1992, a delinquent balance of \$492.00 was turned over for collection. Applicant has made no payment toward this debt for which he remains responsible.<sup>(5)</sup>

Applicant and his spouse began to experience marital difficulties and they separated four times between 1990 and February 3, 1994, when the divorce was final. In June 1990, Applicant's spouse opened a joint personal loan account with a financial lender (creditor #4). As of July 1996, the outstanding balance of the account was \$4,597.00 with last reported activity on the account in October 1990. While Applicant's name was on the account, his spouse assumed responsibility for repayment as she borrowed the funds.<sup>(6)</sup>

On April 6, 1991 and April 30, 1991, Applicant obtained medical services from a local hospital (creditor #5) related to the back injury suffered at work in 1986. Because the injury was related to an ongoing workmen's compensation claim, Applicant rightly assumed that the insurer would be responsible for the bill and he made no payment toward the \$63.00 and \$190.00 due for the respective services. The delinquencies were turned over for collection. By letter dated March 19, 1997 (App. Ex. G), the insurer requested the collection agency submit the bills to it for payment.

At the time separated from his wife and living out of the marital home, Applicant on September 17, 1992, purchased furniture on credit for his apartment from creditor #6. Applicant made payments until sometime in 1995 when he got behind due to his wages being garnisheed for a delinquent student loan debt. After he failed to pay the monthly installment due August 10, 1995, the lender filed in court to recover the \$2,195.68 owed on the account. On March 18, 1996, creditor #6 was awarded a default judgment against Applicant in the amount of \$2,320.68 with interest at the rate of 10% per year.<sup>(7)</sup>

Sometime prior to January 1993, Applicant's spouse received medical treatment from a local physician (creditor #7). An unpaid balance of \$248.00 was turned over for collection in about January 1993. Applicant has not paid on the debt

because it was incurred by his now ex-spouse.

In 1993, Applicant moved from a residence and had the gas company pick up the meter. At the time his account closed, Applicant had an \$83.00 balance owed to the gas company (creditor #8) which was billed to him on or about December 6, 1993. Applicant failed to repay it and the account was turned over for collection on January 12, 1994. He has made no payment on the account as of the hearing.

Shortly before his divorce was finalized, Applicant in January 1994 financed the purchase of a 1984 ----- automobile through a lender (creditor #9) at monthly terms of \$274.00 per month. The car began having mechanical difficulties and in July 1995, Applicant financed the purchase of a second automobile, a 1985 ----- at a cost of \$13,134.00.<sup>(8)</sup> After he bought this second car, Applicant "just dropped the obligation" to creditor #9. A delinquent balance of \$2,043.00 owed to creditor #9 was charged off in about May 1996. Applicant has paid nothing on that debt.<sup>(9)</sup>

In June 1994, a judgment was entered against Applicant and in favor of a former landlord of Applicant's (creditor #10) in the amount of \$130.00 for unpaid rent. Applicant refused to pay the rent at a former residence because the landlord failed to repair the air conditioning unit. He was subsequently evicted and the judgment obtained against him. Applicant has not paid on the judgment because he regards it as unfair.

On January 4, 1995, the United States Department of Education issued a wage garnishment withholding order to Applicant's employer to recover a \$4,335.65 student loan obligation which Applicant defaulted on. Commencing February 3, 1995, and to continue until paid, Applicant's wages were garnished by his employer in the amount of ten percent of Applicant's disposable wages or at that time \$115.87 per month. The withholding order was canceled on June 4, 1996.

On March 10, 1995, Applicant was interviewed about his financial problems by investigators from another Federal Government agency (agency B). Applicant related that his financial problems started when he was laid off; that he injured his lower back at work in 1986/87 and in 1991 had to have back surgery; that he got divorced on February 1, 1994, after four years of being separated off and on, and that he had put all his savings into the house and his spouse got the house in the divorce.<sup>(10)</sup> Applicant stated that he would make every effort to take care of his past due accounts in a timely manner and that the debt to creditor #4 belonged to his ex-wife and he would contact her regarding taking care of it. He stated he would contact the consumer credit bureau with regard to setting up some type of plan for consolidating his past due bills and paying them off.

In May 1995, Applicant purchased a washing machine on credit from creditor #11. High credit on the account was \$505.00. Applicant paid on the account until November 1995 and remains indebted for the \$474.00 outstanding balance.<sup>(11)</sup>

On June 1, 1995, Applicant was interviewed by a second investigator from Government agency B. Applicant reported that he was trying to take care of his overdue bills, that his ex-wife had not turned over his credit cards to him and she charged items on them, to include using his account at a local furniture store. With respect to creditor #1, Applicant indicated he owed \$8,625.00 to the bank for a repossessed vehicle and he was in the process of trying to work things out with the creditor. He admitted to the ongoing garnishment of his wages to recover \$4,335.65 for his student loan on which he had defaulted. Applicant contacted the investigator by telephone on July 25, 1995, and advised him he had been paying on his bills.

Based on the results of the investigation, Applicant on or about July 26, 1995, was favorably granted certification under agency B's personnel reliability program and permitted to occupy a mission critical position and/or unescorted access to mission critical space systems areas.

Sometime between March 10, 1995 and August 24, 1995, Applicant contacted the consumer credit counseling service. He was advised he was a candidate for bankruptcy but he took no action at that time to contact a bankruptcy attorney or consolidate his debts.

On August 24, 1995, Applicant was interviewed by a Special Agent (Special Agent C) from DIS. <sup>(12)</sup> He stated he had sought counseling in regard to his financial situation and that it had been strongly suggested to him that he file for relief under the bankruptcy laws. Applicant indicated he planned on filing under Chapter 7 in the near future and that the debt to creditor #1 and any medical bills not covered under workmen's compensation would be listed on the bankruptcy. Applicant indicated he had no intent to repay or include the debt to creditor #4 on the bankruptcy as it was an obligation of his ex-spouse. He also had no intent to satisfy creditor #2 as he felt he should have been allowed out of the health fitness membership because of his medical problems. Applicant disputed the debt for alleged back rent owed to creditor #10 due to the air conditioning problems, but he would include it on any bankruptcy filed in order to get it off his credit report.

In about November 1995, Applicant issued an insufficient funds check to a local grocery store (creditor #12) in the amount of \$51.00. In January 1996, the delinquent obligation was placed for collection.

In about December 1995, Applicant contacted a bankruptcy attorney (attorney D). He did not file because he did not have the funds (approximately \$1,000.00) available.

On October 24, 1996, Applicant was reinterviewed by Special Agent C with another DIS Agent present as a witness. As reflected in a signed, sworn statement which Applicant voluntarily executed on that date, Applicant indicated that he had planned to file for bankruptcy but did not have the money. He admitted he had been unsure whether he ought to file, but now felt he had no other recourse. Applicant stated he would file that very morning and include on the bankruptcy the \$7,214.00 debt owed to creditor #1, the \$474.00 debt to creditor #11, the \$927.00 debt to creditor #2, the \$2,043.00 to creditor #9, his medical debts to creditors #3 and #4, and the \$130.00 due creditor #10. He intended to inquire of the collection agency as to the \$51.00 debt owed creditor #12 and pay it himself.

On February 24, 1997, Applicant filed for Chapter 7 bankruptcy. <sup>(13)</sup> A meeting of the creditors was held on April 7, 1997. In the opinion of Applicant's bankruptcy attorney, Applicant will be granted a discharge of all his unsecured debt set forth in his bankruptcy petition.

As recently as two years ago (circa 1995), Applicant was still trying to live as he had during his marriage. In an effort to become debt free, Applicant has given up his cable television and moved twice to less expensive apartments with a reduction in rent from the \$550.00 per month two years ago to his current one bedroom apartment at \$350.00 per month.

The former President and General Manager of company A, in his ten years of association with Applicant, found him to be an exemplary employee.

### **POLICIES**

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the seriousness, recency, frequency and motivation for an applicant's conduct; the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the circumstances or consequences involved; the age of the applicant; the absence or presence of rehabilitation, the potential for coercion or duress, and the probability that the conduct will or will not recur in the future. *See* Directive 5220.6, Section F.3. and Enclosure 2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

## FINANCIAL CONSIDERATIONS

**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, a business downturn, unexpected medical emergency, or a death, divorce or separation.)

\* \* \*

Under the provisions of Executive Order 10865 and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

### Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the 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 is nonetheless security worthy. As noted by the United States Supreme Court in *Department of 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." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the Applicant.

### CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility and demeanor of those who testified, this Judge concludes that the Government has established its case with regard to criterion F.

Criterion F refers to financial indebtedness which is incurred or left unsatisfied under circumstances which suggest the debtor is irresponsible, avaricious, or under financial duress likely to cause action contrary to the national interest. As of May 23, 1997, Applicant had six outstanding judgments which he has largely ignored (awarded creditors #1, #2, #3, #6, #10 and #12) in the aggregate of \$11,101.68, \$7,214.00 of which represents the balance owed on a delinquent car loan following repossession and resale of a ----- which he purchased in the 1984/85 time frame.<sup>(14)</sup> In addition, Applicant is responsible for delinquent balances of \$83.00 to creditor #8 for the gas bill, \$2,043.00 to creditor #9 for the ----- automobile, and \$474.00 to creditor #11 for a washing machine. Disqualifying conditions (DC) 1. (history of not

meeting financial obligations) and 3. (inability or unwillingness to satisfy debts) of the Adjudicative Guidelines pertaining to Financial Considerations are applicable to the aforesaid debts.

In contrast, with the exception of the \$492.00 judgment awarded creditor #3 for medical services rendered his cut hand in November 1989, his medical bills were related to a workmen's compensation claim and should have been covered by his insurer. Applicant's failure to repay the debts to creditors #4 and #7 engender little concern, as the debts belonged to his ex-spouse. It is noted that she assumed responsibility for repaying at least creditor #4. The Government, moreover, failed to prove that Applicant has a legal obligation with respect to the delinquent accounts alleged in subparagraphs 1.h. and 1.o. of the SOR. [\(15\)](#)

Applicant proffers in mitigation that all his debts with the exception of those under \$100.00 are listed on his bankruptcy petition which was filed on February 24, 1997. Applicant did not provide the copy of his bankruptcy schedules for confirmation and he has not yet been granted a discharge. Assuming Applicant is afforded a fresh start and all his debts are discharged, the manner in which he managed his finances in the past may nonetheless preclude the affirmative finding that he is security worthy. [\(16\)](#) If on examination of the circumstances surrounding the accumulation of debt there is evidence to suggest that the debts discharged were the result of disregard, mismanagement or irresponsible expenditure, for example, a compelling argument can be made for an adverse decision founded on failure to adhere to his responsibilities.

Of the six listed mitigating conditions (MC), all but MC 5., which pertains to unexplained affluence, have potential applicability. While the judgment awarded to creditor #1 has been outstanding since April 1990 and that to creditor #2 since April 1991, he stopped paying on his furniture loan to creditor #6 in August 1995, on his auto loan to creditor #9 for the 300 Z in summer 1995, on his loan for the washing machine to creditor #11 in November 1995, and he issued a bad check to creditor #12 in November 1995. Applicant incurred these debts too recently for favorable application of MC 1. Furthermore, his demonstrated disregard of all the accounts with respect to repayment is likewise viewed as recent financial irresponsibility. Nor were his debts isolated in nature which is required for MC 2. Applicant's loss of employment is a condition that was largely beyond his control which serves to explain his failure to remain current on his car loan with creditor #1. As a result of his divorce, Applicant incurred additional expenses in maintaining his own residence which set him back financially. For example, he had to purchase furniture for his apartment as his spouse got everything. The financial straits in which he found himself in 1995 cannot all be attributed to factors beyond his control, however. Applicant testified that two years ago, he was trying to keep up with his ex-spouse. In addition to getting an apartment beyond what he could reasonably afford and still pay his debts, Applicant apparently had cable television, and in May 1995, purchased a used -----, incurring an additional monthly obligation of \$364.00. This Administrative Judge is not concerned with the make of the automobile purchased as much as with the costs associated with the car when he had at the time longstanding delinquencies he had not paid, a \$274.00 monthly car payment for the -----, and his wages were being garnished for default on a student loan. The garnishment negatively impacted Applicant's ability to repay creditor #6, but where his disregard made the garnishment necessary, the garnishment is not a mitigating condition of the type contemplated within MC 3. MC 3. has limited applicability in this case.

MCs 4. and 6. apply where an applicant has of his own initiative or volition made efforts to rectify his financial situation. For favorable consideration of MC 4., Applicant must either be in counseling or have received counseling for the problem and there must be clear indication that the problem is being resolved or under control. During a March 10, 1995 interview with a Government investigator, Applicant stated he would contact the consumer credit bureau with regard to setting up some type of plan for consolidating his past due bills and paying them off. Applicant contacted the consumer credit counseling service in mid 1995 and was advised he should consider bankruptcy. The bankruptcy was not filed until February 24, 1997, because he lacked the financial means to pay counsel. As of May 23, 1997, it was not clear which debts, if any, would be discharged in bankruptcy, so it cannot be said that his problem is resolved. Furthermore, assuming Applicant comes out of the Chapter 7 debt-free, it is not clear that his criterion F problems will not recur in the future. With respect to efforts Applicant has made which might fall with MC 6 (good faith effort to repay overdue creditors or otherwise resolve debts), Applicant has contacted creditors #8 and #12 as well as the insurer on the workmen's compensation claims. The ameliorative impact of those contacts are undermined by his failure to pay anything on the outstanding judgments against him. Applicant indicates that the Government did him a favor in going over his financial record. As of August 1995, Applicant was aware that the Defense Department had concerns over his financial status and he "dragged his feet" with respect to resolving his financial problems. To his credit, Applicant has

moved to a one bedroom apartment at less rent and canceled his cable television. These actions are not enough to overcome his record of disregard of those debts alleged in subparagraphs 1.a., 1.b., 1.d., 1.i., 1.k., 1.l., 1.m., 1.n., and 1.p. of the SOR.

## **FORMAL FINDINGS**

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

### Paragraph 1. Criterion F: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: For the Applicant

Subparagraph 1.k.: Against the Applicant

Subparagraph 1.l.: Against the Applicant

Subparagraph 1.m.: Against the Applicant

Subparagraph 1.n.: Against the Applicant

Subparagraph 1.o.: For the Applicant

Subparagraph 1.p.: 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.

**Elizabeth M. Matchinski**

**Administrative Judge**

1. One document, identified in the record as Applicant Exhibit C, was never formally moved into evidence. Also at the hearing, Applicant's counsel requested this Administrative Judge take judicial notice of a state statutory provision pertaining to limitations on actions for recovery of a debt. A copy of the pertinent statute having been timely received on May 29, 1997, the undersigned in deliberating this case took official notice of Section 95.11, Chapter 95.

2. Pages 31 through 48 were missing from the original of the transcript received by this office on June 16, 1997.
3. In a signed, sworn statement dated February 26, 1990, executed in connection with a Defense Investigative Service (DIS) inquiry into his financial situation, Applicant stated that he had contacted the bank through their attorney and would be establishing a payment schedule with them. Govt. Ex. 8. During an investigation conducted by another Government agency, Applicant stated on March 10, 1995, that the car was a 1983 -----, that he was in the process of working out something with the bank to repay the \$8,625.00 debt for the repossessed car. Govt. Ex. 6. On his Personnel Security Questionnaire (PSQ) executed on April 12, 1995, Applicant indicated that he purchased a 1979 ----- in 1984 and voluntarily turned it back in 1987, and that the balance owed was \$5,900.00. Govt. Ex. 1. In a signed, sworn statement dated August 24, 1995 executed in connection with a DIS interview, Applicant related that the balance on the debt was \$5,900.00 and that he did not intend to repay it as he considered it unfair due to the fact the car was a lemon. At the hearing, he testified he purchased the car in 1985, and that in February 1990 he met with an attorney from the bank who would work with him, but admitted he made no payment. Tr. p. 55. The Government presented no independent evidence to substantiate that the loan was opened on December 3, 1987. The variance in the accounts reflects adversely on Applicant's credibility, but this does not relieve the Government of the burden to establish controverted facts, which includes the date on which the car was purchased.
4. The credit bureau report (Govt. Ex. 5) reflects it was an individual account opened in July 1990 with payment terms \$18.00 per month. In his Answer, Applicant indicates the account was joint with his spouse and opened during their marriage. On March 10, 1995, he had indicated to another government agency that the judgment was for two fitness club memberships with the understanding that if he didn't like it, he could quit after a couple of weeks. At the hearing, he testified that they joined the fitness center around April 1991 and that he and his spouse had an understanding that she would pay the debt following the divorce because she still wanted to workout and he didn't think they needed that contact. Tr. p. 92. Asked by the undersigned whether he wasn't responsible for the debt between April 1991 and his divorce in February 1994, Applicant admitted he was partially responsible, but made no payments because they (he and his ex-spouse) had an understanding made when they were going out of the court following the decree of dissolution in 1994. Whereas she did not agree until 1994 to assume the debt, he cannot rationally attribute his failure to make any payments between April 1991 and 1994 to the actions of his ex-spouse.
5. After learning of his outstanding medical debts in 1995, Applicant contacted his medical insurer to ascertain why his work-related injury claims had not been filed. In response, the insurer notified Applicant by letter dated March 19, 1997, that the bills from creditor #3 and creditor #5, to include that for services rendered on November 28, 1989, were related to his workmen's compensation injury and therefore he was not responsible for them. However, Applicant admitted at the hearing that the treatment in November 1989 was for injury to his hand which he sustained while cleaning fish. Tr. pp. 71-72. Applicant maintains that he still thought his insurance company should have paid. However, he presented no evidence that his insurance covered such an injury.
6. Applicant testified to his understanding the debt has been paid by his ex-spouse. Tr. p. 44.
7. On August 24, 1995, Applicant was interviewed by a DIS Special Agent. During the course of that interview, Applicant executed a Personnel Financial Statement in which he indicated the account with creditor #6 was current and he was making monthly payments of \$65.00 toward a total amount owed of \$1,700.00. Court records reflect Applicant had failed to make the installment payment due only three days prior, however. Applicant also testified that he called up the creditor and asked them to take the furniture in a "voluntary repossession." Tr. p. 106. However, there is no evidence that Applicant has been relieved of his obligation to repay the judgment.
8. Applicant borrowed about \$1,000.00 from his sister for the down payment on the ----- . Tr. p. 86. He has not repaid his obligation to her. Applicant also testified that the car cost him \$8,000.00 or \$9,000.00. On August 24, 1995, Applicant reported to DIS that he had just bought the second car, that his girlfriend was helping him make the payments on, and that the total amount owed on the loan was \$8,000.00. (Gov. Ex. 7). The credit bureau report (Govt. Ex. 5) reflects high credit on the auto loan was \$13,134.00 and in a Personal Financial Statement (Govt. Ex. 2) dated October 24, 1996, he indicated he was current in his \$364.00 monthly payments on an obligation which at that time was \$9,500.00, which is consistent with a \$13,000.00 initial obligation as opposed to the \$8,000 to \$9,000 testified to.

9. Applicant testified that he purchased the ----- in May 1995 and turned in the ----- automobile two to three months after he got the ----- . Tr. pp. 86- 90. In his signed, sworn statement of October 24, 1996, Applicant stated he just learned that the ----- automobile which he turned in May or June 1996 had left a debt of \$2,043.00 which would have to be listed in his bankruptcy.

10. Court records (App. Ex. A) reflect the marriage was dissolved on February 3, 1994.

11. At the hearing Applicant testified he no longer has the washing machine as it was stolen. . ."relocated." Tr. p. 81. Whether or not the washing machine was stolen, the evidence is that Applicant remains obligated to the creditor.

12. Applicant remarked at the hearing that the DIS Agent made an inappropriate comment regarding his purchase of the ----- automobile. He further testified the Special Agent not only referred him to a bankruptcy attorney, but that the DIS Agent followed him down to the bankruptcy attorney's office. This is not the proper forum to determine whether the DIS Special Agent acted outside the scope of his duties or was otherwise unprofessional. There is no evidence that Applicant was coerced into providing information to the Agent about his finances, to include executing a signed, sworn statement.

13. Applicant testified he wanted to make restitution on those debts under a hundred dollars and placed all the other bills on his Chapter 7 bankruptcy . Tr. pp. 40-41.

14. Applicant testified to his understanding he was no longer liable for the debt as an action to recover had to be commenced within seven years. State statutory provisions on the limitations of actions other than the recovery of real property state, in part:

Actions other than for recovery of real property shall be commenced as follows:

(1) WITHIN TWENTY YEARS--An action on a judgment or decree of a court of record in this state.

(2) WITHIN FIVE YEARS--

(a) An action on a judgment or decree of any court, not of record, of this state or any court of the United States, any other state or territory in the United States, or a foreign country.

(b) A legal or equitable action on a contract, obligation or liability founded on a written instrument.

Fla. Stat. ch.95.11 (1995). While there is a twenty year state statute of limitations on recovery from a judgment entered by a court of record in that state, it is not clear where the judgment was awarded creditor #1. Whether or not the judgment is currently legally enforceable, Applicant's failure to make any payment on that judgment since it was awarded in April 1990 causes security concerns for it reflects disregard of his financial responsibilities. Applicant was aware of the judgment and did nothing to repay it because the car was a "lemon."

15. Applicant has no recollection of any debt owed to the creditor in l.h. and submits that it was a medical bill which his insurer was supposed to pay.

16. Applicant has a legal right to discharge of his debts in bankruptcy and in that vein, the resort to bankruptcy itself is not regarded as a negative factor. The manner in which Applicant incurred the debts and his repayment history remain relevant considerations, however.