

DATE: July 17, 1997

In RE:

SSN: -----

Applicant for security clearance

ISCR Case No. 97-0134

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

Appearances

FOR THE GOVERNMENT

William S. Fields, Esq.

Department Counsel

FOR THE APPLICANT

*Pro se*

STATEMENT OF CASE

On February 6, 1997, 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 denied or revoked. The SOR is attached. Applicant filed his Answer to the SOR on February 20, 1997.

Applicant elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the File of Relevant Material (FORM) on April 14, 1997. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received a copy on April 28, 1997. Applicant's reply was received on May 10, 1997. The case was received by the undersigned for resolution on ay 16, 1997.

FINDINGS OF FACT

The Following Findings of Fact are based on the documentation and testimony. The SOR alleges financial matters. Applicant admitted all the allegations and those admissions shall be incorporated into the fact findings.

Applicant owes \$1,043 and \$4,340 to creditor A (charged off in April 1992), and, as of November 15, 1996, this debt had not been satisfied. Applicant has made three payments totaling \$660 in 1997 to creditor A, in compliance with a repayment plan. He owes \$1,842 to creditor C (charged off in April 1994), and, as of November 15, 1996, this debt had not been satisfied. He owes \$3,178 to creditor D (charged off in May 1994), and as of November 15, 1996, this debt had not been satisfied. Applicant disputes the amount of the debt to creditor D, and wrote the creditor requesting

clarification of the debt. He owes \$73 to creditor E for television cable subscription fees, and the debt was turned over to a credit collection agency in June 1994. As of November 15, 1996, the cable debt had not been satisfied. Applicant planned to pay the cable company in June 1997. Applicant petitioned for Chapter 13 bankruptcy in December 1994, but his petition was dismissed in the Spring of 1995 by Applicant because he believed he could repay all the debts. He was also worried about the potentially negative impact of the bankruptcy on his future credit rating. Applicant owes creditor G \$1,924 (charged off in January 1995), and, as of November 15, 1996, this debt had not been satisfied. Applicant started a repayment plan with creditor G in February 1997 and made four payments totaling \$260, toward ultimate satisfaction of the debt. Finally, Applicant's net monthly remainder, after payment of expenses, is \$1,166.<sup>(1)</sup>

Applicant could not repay on his debts sooner than early 1997 because he had to pay more important bills, including utilities, car repair and insurance, and rent.<sup>(2)</sup> He was laid off from work in 1994 and fell behind in his payments to all his creditors, including the lender on his house.<sup>(3)</sup> The lender foreclosed on Applicant's house in 1994.<sup>(4)</sup> Another reason for his financial problems can be found in his divorce decree. One of the terms of his divorce petition in 1984 is a prohibition against leaving the state until his children reached 18 years of age. He had located a job in a nearby state in 1996, which he had to turn down because his children had not reached their 18th birthday.

In addition to documented proof of payments to creditors A and G in early 1997, Applicant presented documented proof of communication to creditors A and G to adjust their records accordingly, to reflect the 1997 payments. Now, Applicant does not use his favorable credit standing if he cannot pay for an item in cash. Considering the corroboration which substantiates proof of payment to creditors A and G, I find Applicant is proceeding with a credible plan to repay his creditors after encountering some financial problems because of his layoff in 1994. I also find Applicant will maintain responsible control over his financial obligations in the future.

### **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.

##### Factors for Clearance:

1. the behavior was not recent.
2. it was an isolated event.
3. the conditions that resulted in the behavior were largely beyond the person's control, i.e., loss of employment.
6. the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

#### **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. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to the sufficiency of proof of a rational connection, 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. However, Applicant has effectively mitigated the Government's concerns by positive actions to restore his financial responsibility. Applicant has a relatively short history of not meeting approximately \$12,400 in financial obligations.<sup>(5)</sup>

Applicant's financial problems are approximately four years old, but there is no evidence he has accumulated any new debt since 1994. The evidence shows that Applicant's indebtedness resulted from a layoff in 1994, or circumstances beyond his control. Conversely, the indebtedness did not result from deceptive or illegal financial practices, or drug or alcohol abuse by Applicant. When Applicant was laid off in 1994, he, like most individuals, had a difficult time making ends meet. When Applicant returned to work in July 1996, he had to commit his earnings to utilities, rent and auto expenses. Within nine months of returning to work, Applicant used good judgment by setting up payment plans to pay his old debts. The documented proof of repayment of \$920 to creditors A and G between February and May 1997, together with Applicant's intentions to repay the remaining creditors, convinces me Applicant will follow his repayment plan until all old creditors are paid. In addition, Applicant will maintain control over his financial obligations in the future.

### **FORMAL FINDINGS**

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

Paragraph 1 (financial considerations): FOR THE APPLICANT.

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.

e. For the Applicant.

f. For the Applicant.

g. For the Applicant.

Factual support and reasons for the foregoing findings are found in FINDINGS OF FACT and CONCLUSIONS above.

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Paul J. Mason

Administrative Judge

1. As of November 1996, Applicant owed his six creditors approximately \$12,400. However, in early 1997, Applicant repaid \$920 pursuant to repayment plans with creditors A and G.
2. Applicant provided documented corroboration of payment of these bills.
3. Applicant began working for his present employer in July 1996.
4. Applicant presented documentary proof that he owes no money to the lender or the Veterans Administration because the property actually increased in value during the five and one-half years of ownership.
5. To Applicant's credit, there is no evidence to infer or even suggest the financial problems were caused by illegal financial practices like theft or fraud or any kind of breach of trust. There is no evidence to suggest Applicant is unable or unwilling to repay, or that his financial problems were connected to gambling, drug or alcohol abuse.