

DATE: _August 11, 1997

In re:

Applicant for Security Clearance _____

ISCR OSD Case No. 97-0232

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR THE GOVERNMENT

Matthew E. Malone, Esq.

Department Counsel

FOR THE APPLICANT

Thomas Albin, 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 March 31, 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 April 21, 1997, Applicant responded to the allegations set forth in the SOR and requested a hearing. The case was assigned accordingly to this Administrative Judge on June 3, 1997, and on June 11, 1997, a hearing was scheduled for June 27, 1997. At the hearing, eleven Government and three Applicant exhibits were admitted and testimony taken from the Applicant. A transcript of the proceedings was received in this office on July 16, 1997.

The record was held open until July 17, 1997, for Applicant to submit additional documentary evidence proving payment to creditors. By facsimile on July 17, 1997, Applicant, through counsel, timely submitted four additional documents. The Government having no objection thereto, the following were admitted into evidence: the memo dated June 26, 1997 (one page) pertaining to the collection of two judgments awarded a local hospital as Ex. D; the satisfaction of the other judgment awarded the hospital dated June 24, 1997 (one page) as App. Ex. E; interest calculations dated June 19, 1997 (two pages) as App. Ex. F, and credit advisors report, dated July 2, 1997 (one page) as App. Ex. G. With the receipt of the Government's position dated July 17, 1997, the case was ripe for a decision.

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 45 year old painter who has worked for her current employer (company A), a defense contractor, since December 1, 1980. She seeks to retain a Secret security clearance which was granted to her on or about March 19, 1985.

Applicant is a single mother who raised three children, two sons and a daughter. Applicant managed financially on her income as a painter from company A, to include overtime pay. In 1991, Applicant took out the first of three loans to finance a college education for one of her sons. She began to experience financial difficulties shortly thereafter, as follows:

Circa 1991, Applicant's brakes failed on her automobile and she struck someone from behind. At the time of the accident, Applicant had allowed her automobile insurance and registration to expire. On March 22, 1993, the insurer (creditor #1: Subparagraph 1.d. of the SOR) for the victim obtained a judgment against Applicant in the amount of \$4,979.66 with weekly payments of \$15.00 from April 19, 1993. Applicant failed to make any payments, and on November 26, 1993, the creditor filed for a wage execution to recover the unpaid balance of the judgment plus a \$10.00 fee, which was granted on January 11, 1994. As of February 1997, the wage execution was still pending. After receiving the SOR, Applicant consolidated this loan with those owed creditors #8 and #9, authorizing the credit assistance firm to deduct \$100.00 from her savings twice per month. Commencing April 29, 1997, the debt was to be repaid by the consolidation firm directly to the creditor at the rate of \$75.00 per month. With the May 1997 monthly payment, the amount owed creditor #1 was approximately \$4,915.00.

Between 1991 and 1993, Applicant took out three separate loans to finance a college education for her son.⁽¹⁾ Applicant paid on the education loans for two years until work overtime was reduced. She was notified of the deficiency in 1993, but could not make the \$2,000.00 to \$3,000.00 payment requested. In August 1995, an educational claim was filed by the lender (creditor #2: subparagraph 1.k.) to recover the outstanding balance of the defaulted three loans. On March 21, 1996, the court issued a withholding order directing company A to garnish Applicant's wages until the collective amount due, \$18,325.59, was repaid. Since the order's execution, \$42.00 per week has been deducted from Applicant's wages. As of January 20, 1997, the balance owed was \$16,467.00.⁽²⁾

Sometime prior to December 1991, Applicant obtained dental services from creditor #3 (subparagraph 1.a.). Applicant experienced problems with the dental work which required correction by another dentist. Applicant paid for the services rendered by this second dentist but did not pay creditor #3's bill. On December 31, 1991, the creditor was awarded a judgment against Applicant in the amount of \$860.93. on which Applicant paid \$350.00. On January 27, 1994, creditor #3 sought wage execution to recover the outstanding balance of \$510.93 plus \$10.00 wage execution costs. On March 7, 1997, Applicant commenced repayment. As of June 19, 1997, she had reduced the balance owed to \$235.27.

Applicant's credit card account with a clothing store (creditor #4: subparagraph 1.b.), opened in September 1988, became delinquent in the amount of \$442.00 and was charged off in December 1992. During an interview with a Special Agent of the Defense Investigative Service (DIS) on February 7, 1997, Applicant indicated she would attempt to pay the account in the future when she was financially able to do so. On April 25, 1997, she made a \$50.00 payment. With subsequent payments totaling \$143.00, she had reduced the amount of the obligation to \$249.00 as of June 6, 1997.

A delinquent debt with another retailer (creditor #5: subparagraph 1.c.) was charged off to profit and loss in about January 1993 with \$190.00 owed. Applicant made no effort to satisfy the debt until June 1997 when she made a \$50.00 payment.

In October 1992, Applicant entered into a rental agreement with creditor #6 (subparagraph 1.e.). When she vacated the premises on or about August 13, 1993, Applicant owed back rent and cleaning fees in the amount of \$2,203.30. On February 7, 1997, Applicant indicated to the DIS Special Agent during her interview that she would make a payment when financially able to do so. Applicant made payments of \$50.00 on April 25, 1997, May 9, 1997, May 27, 1997, and June 6, 1997, reducing the amount owed to \$2,003.30 as of June 19, 1997.

On three separate occasions, Applicant received emergency room medical service at a local hospital (creditor #7) which were not covered by her insurance. An outstanding balance of \$194.64 for the first visit was delinquent as of January 17, 1994 (subparagraph 1.f.). On May 2, 1994, the creditor was awarded a judgment against Applicant in the amount of \$224.64. On June 30, 1994, the court ordered attachment of Applicant's wages to collect \$234.64. With sheriff's fees,

the debt as of July 8, 1994 amounted to \$262.44. As of July 18, 1994, Applicant owed creditor #7 an additional \$272.90 for a second emergency room visit (subparagraph 1.h.). On November 14, 1994, the creditor was awarded a judgment against Applicant in the amount of \$302.90. On January 31, 1995, the court ordered execution of Applicant's wages to recover \$312.90, the amount of the unpaid judgment and wage execution costs. As of February 13, 1995, with sheriff fees the amount of the debt was \$351.49. Creditor #7 was awarded a third judgment for unpaid fees associated with an emergency room visit in 1995. On June 13, 1995, the court ordered attachment of Applicant's wages to recover the amount of the judgment plus wage execution fees (subparagraph 1.j.). With sheriff fees, the amount sought to be recovered through garnishment was \$235.58. Applicant made no payments on the outstanding judgments as she was unaware her insurance company had not covered the medical costs. Applicant's wages were never garnished to pay creditor #7 and the outstanding judgments were referred to a local attorney for collection. With issuance of a \$150.00 money order forwarded to the collection agent on April 3, 1997, Applicant commenced repayment. After an additional \$85.00 payment in April 1997, Applicant sent \$150.00 in May 1997 and \$100.00 in June 1997. As of June 20, 1997, Applicant owed \$262.90 on the May 2, 1994 judgment. The outstanding balance on the November 14, 1994 judgment had been reduced to \$223.21 as of June 26, 1997, and the \$235.58 judgment awarded in 1995 had been satisfied in full.

In April 1994, Applicant financed through creditor #8 the purchase of a used (1988 or 1989) Pontiac Le Mans automobile with payment terms of \$205.00 per month for twenty-four months (subparagraph 1.g.). Applicant was not able to make the payments and the car was repossessed in 1994. On December 18, 1995, creditor #8 was awarded a judgment against Applicant in the amount of \$2,567.91. The creditor sought wage execution to recover the judgment plus \$10.00 wage execution costs, which was granted by the court on April 15, 1996. On February 7, 1997, Applicant indicated to DIS that she would attempt to make payment on the judgment when possible. In April 1997, Applicant included this loan in a consolidation agreement under the terms of which the loan would be repaid, with payments from the credit advisor to creditor #8 at the rate of \$40.00 per month. As of May 2, 1997, the outstanding balance owed to creditor #8 was \$2,538.00.

Applicant's daughter, at the time with only a learner's permit, had an accident while driving Applicant's car without a licensed driver present. Applicant did not have automobile insurance and a judgment was entered against her on March 27, 1995, in the amount of \$1,435.60 in favor of creditor #9, an insurance company (subparagraph 1.i.). On June 28, 1995, the creditor filed for wage execution to recover the unpaid judgment plus \$10.00 costs. Applicant paid nothing on the \$1,445.60 debt, but in April 1997, she included this in the loan consolidation agreement under the terms of which the loan would be repaid at the rate of \$30.00 per month. As of June 1997, no payments had yet been made by the creditor advisor to creditor #9.

In August 1995, Applicant purchased a 1995 Dodge Neon for \$10,130.00. She has been current on her payments, with the monies being taken automatically out of her savings account.

In May 1996, Applicant's wages were garnished to repay a \$1,288.00 judgment awarded the state Department of Transportation for damage to a guardrail which Applicant struck with her automobile.

As of June 27, 1997, Applicant's adult daughter and ten month old granddaughter were residing with her. Applicant was paying the \$700.00 monthly rent on their apartment. Applicant has been working seven days a week (for the past month eight hours a day) at company A as a painter in an effort to meet her financial obligations. Her first check of the month is devoted to living expenses. With her second check, Applicant pays toward her delinquent obligations. After expenses, Applicant estimates she has \$25.00 to \$50.00 in discretionary income at the end of the month. In July 1997 Applicant plans to go back on twelve hour shifts seven days a week with the extra hours being paid at time and a half on Saturdays and double time on Sundays. Applicant intends to repay all her debts.

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:

- (6) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

* * *

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 her 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 she 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 the Applicant, 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 June 1997, Applicant was indebted to nine creditors in the aggregate about \$27,554.68, \$15,543.00 of which is for the defaulted educational loans.⁽³⁾ This is a substantial indebtedness for Applicant who has discretionary funds of only \$25.00 to \$50.00 per month despite overtime earnings, but there is no evidence that the debt was incurred in pursuit of an extravagant lifestyle. Only those debts owed creditors #4 and #5, which together amount to \$389.00 as of June 1997, were for credit card purchases of consumer items. The other debts were for education, medical/dental services, rent and transportation. Applicant had another car at the time she purchased the used (1988 or 1989) Pontic LeMans in 1994, but her other automobile was having mechanical difficulties. While she financed a new automobile in 1995, it was an economy model.

Concerns persist not because of the manner in which the debts were incurred (two of the judgments being the result of unforeseen automobile accidents), but rather with the ongoing nature of her financial problems and her failure to timely address those debts listed in the SOR, especially those that had been reduced to court judgments. Applicant managed to pay on the education loans for only two years. With respect to her automobile accident in 1991, creditor #1 was awarded a judgment against her in March 1993. Applicant made no effort to resolve that outstanding indebtedness until after she received the SOR. Notwithstanding her dispute over the quality of dental services rendered by creditor #3, Applicant remained legally responsible for that debt. Applicant made a partial payment of \$350.00 toward the December 1991 judgment debt sometime prior to January 27, 1994, but none thereafter until March 7, 1997. Applicant made no payments on the outstanding balances owed the retail concerns (creditors #4 and #5) until April 1997 and June 1997, respectively. At the time she vacated her apartment in August 1993, Applicant would not have known of the cleaning costs for the rental unit she had occupied, but she certainly knew she had been delinquent in her rental payments to creditor #6. With respect to her unpaid hospital bills owed to creditor #7, Applicant, in contrast, was unaware that her insurance would not cover the cost. Although Applicant commenced repayment of this financial obligation on April 3, 1997, which was prior to her receipt of the SOR, she was aware of the judgments at least as of her February 1997 DIS interview. Applicant had the used Pontiac LeMans only a few months in 1994 before the car was repossessed by creditor #8. While the insurance debt to creditor #9 was unexpected in that she could not have foreseen her daughter's automobile accident, Applicant bears responsibility for maintaining an uninsured vehicle and allowing her unlicensed daughter to operate the vehicle without a licensed driver present. Applicant made no effort to satisfy the March 1995 judgment until April 1997 when she pursued the loan consolidation. Of the Adjudicative Guidelines pertaining to financial considerations set forth in Enclosure 2 to the Directive, disqualifying conditions (DC) 1. (history of not meeting financial obligations) and 3. (inability or unwillingness to satisfy debts) must be considered in evaluating Applicant's current security worthiness.

Of the five potentially mitigating conditions (MC),⁽⁴⁾ Applicant has experienced financial difficulties since the early 1990's, the extent and duration of which preclude favorable consideration of the factors of remoteness (MC 1.) or isolation (MC 2.). The Directive provides for mitigation where the circumstances which led to the financial problems were largely beyond an individual's control. Loss of overtime hours at company A compromised her ability to repay the educational loans and other debts, although it is not clear in the record to what extent. Applicant has worked continuously at company A since December 1, 1980. As a single mother with three children to support, she managed to make ends meet, but she did not have the resources to reasonably take on some \$18,000.00 in additional debt for her son to further his education. While her intentions were understandable, it cannot be said that her financial problems were entirely beyond her control to warrant mitigation under MC 3. The automobile accidents were not foreseeable, but the judgment debts owed to creditors #1 and #9 were due, at least in part, to her failure to have insurance. These judgments debts are in the process of being resolved through loan consolidation with that judgment awarded creditor #8, but there is insufficient evidence to conclude that Applicant received the credit counseling required for favorable consideration of MC 4.

To her credit, Applicant has made substantial efforts, albeit very recent, to resolve her longstanding financial delinquencies with those creditors listed in the SOR. For favorable consideration of MC 6., the efforts must have been

taken at Applicant's initiation and in good-faith. Applicant did not disregard the delinquency notices forwarded to her by the educational loan lender, but she was not able to make the \$2,000.00 to \$3,000.00 initial payment requested by the creditor. As a consequence, she did nothing. While the education loans are currently being repaid through wage attachment since March 21, 1996, garnishment is not considered a good-faith effort. Applicant's \$350.00 payment sometime prior to January 21, 1994 toward the reduction of the judgment awarded creditor #3 meets both criteria, even though the ameliorative impact of that payment is undermined by her failure to make any further effort until March 1997. Applicant also initiated repayment of the delinquency to creditor #7 prior to her receipt of the SOR, yet most of her efforts to rectify her financial situation have been undertaken since April 10, 1997. Shortly thereafter, Applicant contacted a credit advisor service, whose number she found in the telephone book, and consolidated her debts with creditors #1, #8 and #9. (5) Over the last two months, in addition to continuing regular payments to creditors #3 and #7, Applicant paid creditor #4 \$193.00, creditor #5 \$50.00 and creditor #6 \$200.00. Even with these payments, Applicant's financial problems are not likely to be resolved in the near future. Assuming the current rate of garnishment, the defaulted on education loans will not be satisfied until sometime in 2003. The Directive does not require one to be debt-free, however. Notwithstanding the fact that most of the payments were made after Applicant received the Statement of Reasons, she testified credibly to her commitment to satisfy her creditors. Her willingness to work the maximum hours available to her to make the funds available is a measure of the strength of her resolve and her ongoing repayment efforts over the past two months confirm that resolve. Furthermore, there is no evidence that she is failing to meet her current financial obligations. While the delinquencies to the creditors listed in the SOR raise legitimate security concerns, Applicant got financially overextended trying to provide a future for her children. There is no evidence that she incurred debt which she never had the intention to repay, and she has a history of working extended hours to meet her financial obligations. After consideration of all the evidence, this Administrative Judge finds little, if any, risk that Applicant will engage in illegal acts to generate funds to satisfy her creditors. Favorable findings are warranted as to subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., and 1.k. because of her ongoing, albeit very recent, efforts to resolve her financial difficulties.

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: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For 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.: For the Applicant

Subparagraph 1.j.: For the Applicant

Subparagraph 1.k.: For the Applicant

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.

Elizabeth M. Matchinski

Administrative Judge

1. Applicant testified that she took out three separate loans totaling approximately \$18,000.00. The precise extent of the original debt is not clear in the record.
2. At the current rate, the debt will not be repaid until about 2003.
3. As of January 20, 1997, Applicant's debt to creditor #2 had been reduced through garnishment of his wages to \$16,467.00. With a weekly deduction of \$42.00, the outstanding balance would have been reduced by an additional \$924.00 by the end of June 1997.
4. MC 5. which pertains to affluence clearly is inapposite.
5. Applicant credibly testified that she was not aware that such credit counseling services existed prior to speaking with counsel after she received the SOR.