

DATE: October 20, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0335

DECISION OF ADMINISTRATIVE JUDGE

JOHN R. ERCK

APPEARANCES

FOR GOVERNMENT

William S. Fields, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On May 20, 1997, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, "Safeguarding Classified Information Within Industry," dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6 "Defense Industrial Personnel Security Clearance Review Program" (Directive) dated January 2, 1992, as amended by Change 3, dated February 13, 1996, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make a preliminary determination that it was clearly consistent with the national interest to grant or continue a security clearance for him.

The Applicant responded to the SOR in writing on June 9⁽¹⁾, 1997, and requested a hearing before a DOHA Administrative Judge. The case was assigned to this Administrative Judge on July 1, 1997, and on August 20, 1997, a hearing was convened for the purpose of considering whether it was clearly consistent with the national security to grant, continue, deny, or revoke Applicant's security clearance. The Government's case consisted of five exhibits and no witnesses; Applicant relied on his own testimony and one exhibit. Applicant supplemented the record with an additional exhibit after the conclusion of the hearing. The exhibit was accepted into evidence without objection by Department Counsel. A transcript of the proceeding was received on September 3, 1997

FINDINGS OF FACT

Applicant has denied all of the factual allegations set forth in the SOR under Criterion F, except for the factual allegation set forth under subparagraph 1.a., which he has admitted. I have accepted Applicant's admission and incorporate it as part of my findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is 32 years old and has been employed by his current employer--a defense contractor--since July 1996. He had previously held a security clearance from 1987 to 1993 while a member of the National Guard of State X. A favorable preliminary determination could not be made on Applicant's current suitability for a security clearance

because of financial considerations.

Applicant began to fall behind in his financial obligations after relocating to a high-cost metropolitan area in August 1992; he had previously lived in a more rural area where the cost of living was much lower. Because he did not adjust his lifestyle, he was unable to live within his budget due to the higher living costs of his new home. He has lived in expensive apartments and until recently, he was eating all of his meals at restaurants--seven days a week. To finance his lifestyle, he had to borrow money. He opened two accounts with Credit Union A in mid-1993; one account was a \$5,000.00 signature loan, the other was a credit card with a \$5,000.00 line of credit (both obligations are alleged in subparagraph 1.c. of the SOR). He borrowed more than \$5,000.00 from Creditor B (obligation alleged in subparagraph 1.a. of the SOR) in May 1993 to pay the tuition which enabled him to complete the requirements for his degree in computer information systems.⁽²⁾ In addition to these obligations, Applicant also borrowed more than \$2,000.00 from members of his family.

After Applicant received his degree from College X in June 1993, he was unable to find a good-paying job in his career field. He worked at a series of jobs (Gov. Exh 1), but none of them paid a salary which enabled him to meet current living expenses as well as pay down the debts which he had been incurring. From July 1993 to December 1993, he earned an average of \$2,000.00 per month; from December 1993 to February 1994, he was unemployed. During this time, he had borrowed the maximum amount on the two accounts from Credit Union A. He continued to make payments to the Credit Union until 1995 when the payments became too burdensome. When he attempted to reduce his monthly payments by consolidating the two obligations, the Credit Union refused because each obligation had a different interest rate. He had made several payments on his loan to creditor B, but had fallen several months behind in these payments by July 1996. During the same time frame, he had checks returned ("bounced") for insufficient funds and his utilities were disconnected on "some occasions" because of late payments (Gov. Exh 3). By March of 1997, his indebtedness to Credit Union A exceeded \$13,000.00, and his indebtedness to Creditor B exceeded \$4,400.00. Applicant was not making regular payments to either creditor.

In July 1996, Applicant accepted a position with his current employer at a salary which was substantially higher than the salaries he had previously received. His annual salary at the time of hire was \$55,000.00. As of the date of his hearing, it had increased to \$60,500.00. Applicant has recently taken steps to address his overdue debts. He has met with Consumer Counseling Credit Service(CCCS); they have established a repayment schedule for him with the two creditors whose obligations are alleged in subparagraphs 1.a. and 1.b. By the time the record had closed in his case, Applicant was able to provide evidence that he had made payments totaling more than \$1,100.00 on these obligations. He has also provided evidence that he had made payments totaling \$1,720.00--during 1995--on the loans that had been made to him by members of his family.

He explained at the hearing that he had repaid the members of his family before repaying other creditors, because he felt his relatives were "the people that were going to help (him) out if (he) was in a bad situation" (Tr. 47-48).

With respect to the allegation set forth in subparagraph 1.b., Applicant has provided persuasive evidence through his testimony and through documents, that he has paid the \$924.00 which he supposedly owes for back rent. It is unlikely that the company--to whom this indebtedness is allegedly owed--would have rented apartments to Applicant on **two** subsequent occasions if he had failed or refused to settle an account from a previous occupancy.

Applicant testified that he had recently been offered a position with a company where he would not have needed a security clearance. He decided to stay with his current employer because he "fully committed" to the repayment schedule which CCCS has worked out for him (Tr. 54-57).

POLICIES

The Adjudicative Guidelines of the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations with reasonable consistency that are clearly consistent with the interests of national security. In making those overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines but in the context of the factors set forth in

section F.3. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate that the facts proven have a nexus to an applicant's lack of security worthiness.

The following Adjudicative Guidelines are deemed applicable to the instant matter.

FINANCIAL CONSIDERATIONS

(Criterion F)

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

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

Conditions that could mitigate security concerns:

- (4) The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control.
- (6) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Burden of Proof

The Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government establishes its case, the burden of persuasion shifts to the applicant to establish his security suitability through evidence which refutes, mitigates, or extenuates the disqualifying conduct and demonstrates that 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 that Court's rationale, doubts are to be resolved against an applicant.

CONCLUSIONS

Having considered the record evidence in accordance with the appropriate legal precepts and factors, this Administrative Judge concludes that the Government has established its case with regard to Criterion F. In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section F.3, as well as those referred to in the section dealing with the Adjudicative Process, both in the Directive.

Applicant's admissions and explanations establish a well-documented case of financial irresponsibility. For a substantial period of time, Applicant mismanaged his money and lived beyond his means. Each year, one or two checks were returned for insufficient funds; his utilities were disconnected because he did not make his payments on time. Meanwhile, his profligate life style included spending more than \$700.00 each month eating all of his meals at restaurants. Except for the loan from Creditor B--which he used to finance his education--Applicant incurred the remainder of his indebtedness living a lifestyle which far exceeded his income.

Mitigation for Applicant's indebtedness is found in his recent effort to pay down his obligations and live a more responsible life style. Mitigation is also found in the fact that his indebtedness is not that excessive for someone with his income. He has provided persuasive evidence that he has satisfied the obligation alleged in subparagraph 1.b. in 1994,

and that he had substantially paid off the loans made to him by family members--which were not alleged in the SOR. His total, remaining indebtedness is less than \$20,000.00--not a substantial amount for someone with a current annual income in excess of \$60,000.00, and with the potential for significant future increases. He has received counseling from CCCS and has made payments in excess of \$1100.00 since answering the SOR. He also provided credible testimony that he understands the consequences of not following through on his commitment to satisfy his delinquent financial obligations in accordance with the agreement entered with the CCCS. If Applicant were not serious about this commitment, he would have taken the easy way out. He would have accepted one of the positions recently offered to him which did not require a security clearance. Criterion F is concluded for Applicant.

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

DECISION

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

John R. Erck

Administrative Judge

1. Applicant's answer is dated June 8, but signed and notarized on June 9.
2. Applicant received his degree from College X in June 1993.