

DATE: October 1, 1997

In Re:

Applicant for Security Clearance

ISCR Case No. 97-0315

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR THE GOVERNMENT

Pamela C. Benson, Esquire

Department Counsel

FOR THE APPLICANT

Pro Se

STATEMENT OF THE CASE

On 29 May 1997, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 16 June 1997, Applicant answered the SOR and requested an administrative decision on the record. Applicant did not respond to the Government's File of Relevant Material (FORM)--issued 11 July 1997; the record in this case closed 21 August 1997, the day the response was due at DOHA. The case was originally assigned to a different administrative judge, but was reassigned to me because of workload considerations on 15 September 1997. I received the case on 15 September 1997 to determine whether clearance should be granted, continued, denied or revoked.

The SOR is attached to this Decision and incorporated by reference.

FINDINGS OF FACT

Applicant admitted all the factual allegations of the SOR, except for subparagraphs 1.d. and e (for which he provided proof of payment) and paragraph 2; accordingly, I incorporate those admissions as findings of fact.

Applicant--a 41-year old employee of a defense contractor--seeks a secret clearance.

Applicant has a history of financial irresponsibility, exacerbated by his divorces and periods of unemployment between 1987 and 1996. Applicant divorced his first wife in 1987; he apparently had no children by this wife. He married his second wife in 1990 and divorced her in 1994; this ex-wife obtained a court order for child support for Applicant's two children by her. From April 1993 to August 1994, Applicant was unemployed. He obtained employment for approximately eight months from August 1994 to April 1995, but was again unemployed from April 1995 to January 1996, when he obtained employment with his current company. On 18 March 1996, Applicant's second ex-wife obtained a garnishment order for \$500.00 a month in current child support and \$250.00 a month against an arrearage of

\$10,283.14. On 22 July 1996, Applicant was charged with two counts of felony non-support of these two children between 1 July 1994 and 31 January 1995. Applicant pleaded guilty to these charges on 6 December 1996; imposition of sentence was suspended for three years on condition of three years supervised probation and payment of all court costs, a lump sum payment of \$1,000.00 back child support, and prospective payment of \$173.07 a week child support. Applicant also has a third child by another woman--not Applicant's ex-wife; on 19 September 1996, this woman obtained a garnishment order for \$519.00 a month for current child support and \$259.50 a month against an arrearage of \$3,562.88. In his June answer to the SOR, Applicant claims to have reduced the arrearages to \$6,472.64 and \$2,647.00 respectively; however, he has provided no corroboration for that claim, and the claim cannot be accepted. Even if I accept the claim, the combined arrearages still exceed \$9,000.00.

At the time the SOR was issued, Applicant had past due debts to a medical company, his city government (for failing to properly maintain real estate holdings),⁽²⁾ and a credit card company (for an account charged off in June 1994).⁽³⁾

Applicant owns several pieces of real estate with an appraised value greater than the total of his outstanding debt; he also owns a variety of motor vehicles of indeterminate value.⁽⁴⁾ Although most of the vehicles were acquired before Applicant's first period of unemployment, four were acquired while Applicant was unemployed for sixteen months in 1993-1994, one was acquired during Applicant's brief period of employment in 1994-1995, and one in 1997 after Applicant had been rehired, but still substantially delinquent in his child support payments and other debts.

In January 1997, Applicant personal financial statement showed net income of \$1,002.00 a month, even after the child support garnishments; none of this income was being used to reduce the other debts in the SOR, or to further reduce the child support arrearages. In his June 1997 answer to the SOR, Applicant claims to be in the process of "liquidating" his assets to satisfy the credit card debt and the child support arrearages; however, the record contains no evidence of his efforts to accomplish this liquidation, or evidence of any payments made as a result of the liquidation. Similarly, Applicant claims to be seeking to replace the garnishments with "voluntary income orders," but there is no evidence to demonstrate what action, if any, has been taken to accomplish this. Absent proof, Applicant's liquidation claims cannot be accepted.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

FINANCIAL CONSIDERATIONS (CRITERION F)

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. . . divorce).

CRIMINAL CONDUCT (CRITERION J)

A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

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

(1) any criminal conduct, regardless of whether the person was formally charged;

Conditions that could mitigate security concerns include:

(2) the crime was an isolated incident.

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where 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 or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the 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."

CONCLUSIONS

The Government has established its case under criterion F. The record evidence clearly establishes Applicant's indebtedness and his irresponsible handling of that indebtedness. While the Applicant's divorces in 1987 and 1994 and loss of employment in 1993 and 1995 provide some explanation for many of his debts, those explanations do not mitigate the irresponsible manner in which Applicant approached that indebtedness, either while unemployed or after obtaining new employment. Nor does the fact that Applicant possesses assets sufficient--if liquidated--to satisfy his delinquent accounts mitigate the questionable judgment demonstrated by Applicant in dealing with his indebtedness. (5) Further, Applicant's payment of the two smallest debts on the day he answered the SOR removes those debts as source of concern about indebtedness as such, but does not mitigate the poor judgment demonstrated by Applicant's handling of these debts. Nor do those payments--nor the garnishments nor the new commitment to pay the credit card company constitute a good faith effort to satisfy the debts. Applicant has demonstrated poor judgment in laying back and letting others force the circumstances of his repayment efforts, when he apparently had the means, but not the willingness to satisfy those debts earlier. This irresponsible behavior is recent; his behavior is certainly not isolated; and most important, he has not initiated good-faith efforts to repay overdue creditors or otherwise resolve his outstanding debts. I find criterion F. against Applicant.

The Government has established its case under criterion J, but I find the conduct mitigated. Although the conduct was recent and Applicant has not demonstrated rehabilitation from the criminal aspects of the case, the conduct was isolated. Further, the true security significance of the allegation relates to the financial aspects of this case: that Applicant disregarded his child support obligation enough to draw the attention of criminal law enforcement officials. I find criterion J. for the Applicant.

FORMAL FINDINGS

Paragraph 1. Criterion H: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Paragraph 2. Criterion J: FOR THE APPLICANT

Subparagraph a: For 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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996 (Directive).
2. Applicant paid the medical company and the city government on 16 June 1997, the day he answered the SOR.
3. Applicant did not intend to pay the debt because it was a joint account of Applicant and his second wife and he felt she was half responsible for the debt. He now intends to pay the debt because the credit card company refused his compromise offer of 50 per cent and has placed a blot on Applicant's credit record that Applicant wants to remove.
4. Applicant acquired these vehicles between 1980 and 1997. He "invests" in these kinds of "assets" because of his distrust of financial institutions and a desire to remain "liquid." (Item 5). Of course, these vehicles are not liquid, as demonstrated by the fact that they have not been easily convertible to cash to satisfy Applicant's debts. Further, I cannot conclude that the vehicles represent any significant value: except for a 1993 trailer, none of the vehicles is newer than the 1987 model year; none of the proffered proofs of ownership contain a current market value; many of the proffered proofs of ownership do not establish Applicant's ownership of the vehicle, merely physical possession of the title.
5. I do not suggest that Applicant should have necessarily liquidated his real estate holdings to satisfy these debts. However, Applicant's failure to liquidate any of his vehicles demonstrates questionable judgment, a point conceded by Applicant in his answer. Applicant's judgment is questionable whether Applicant's vehicle collection possesses real, or only minimal, value. Further, not only did Applicant not liquidate any of these vehicles to stay current on his child support payments, he continued to acquire vehicles while he was unemployed. In addition, he continued to buy vehicles after he became reemployed, but still substantially delinquent on his child support payments and other debts.