

DATE: February 9, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0463

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Michael H. Leonard, Esq., Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 3), issued a Statement of Reasons (SOR), dated July 11, 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on Applicant's failure to timely satisfy his financial obligations (criterion F).

On September 4, 1997, [\(U\)](#) Applicant responded to the allegations set forth in the SOR and requested that his case be determined on the written record in lieu of a hearing. The Government submitted its File of Relevant arial (FORM), on October 31, 1997, a copy of which was forwarded to Applicant on November 3, 1997, with instructions to submit material in explanation, extenuation or mitigation within thirty days of receipt. Applicant filed a response on January 16, 1998, to which the Government had no objection. On January 28, 1998, the case was assigned for resolution to DOHA Administrative Judge Kathryn Moen Braeman. On January 30, 1998, it was transferred to the undersigned due to workload considerations.

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 fifty-two year old senior electrical engineer who has worked for his current employer, a defense contractor, since August 1996. He seeks a security clearance for his duties there.

Applicant served in the United States military from September 1967 until his retirement in March 1988. He held a

Secret clearance during his tenure in the military. Shortly after his separation from active duty, Applicant went to work in state A for a large defense contracting company. Single following his divorce from his first spouse in April 1988 and earning sufficient monies from his defense contractor employment to satisfy his financial obligations, Applicant purchased a home in state A in August 1993. Applicant spent approximately \$16,000.00 in repair/renovation to the property. In December 1993, he financed the purchase of a new automobile through a loan of \$24,459.00.

In May 1994, Applicant was transferred by his employer to state B. Having owned his home only for about six months prior to his relocation, Applicant was not able to recoup the renovation/repair costs. Applicant started to get behind on his financial obligations, and accounts were charged off and/or placed for collection as follows:

Applicant had two separate credit card accounts with a sales financing company (creditor #1). The first, opened in November 1989, was charged off in August 1994 with an outstanding balance of \$1,320.00.⁽²⁾ The second account was charged off in October 1994 with a delinquent balance of \$1,190.32.

Applicant's Mastercard account, opened with a credit union (creditor #2) in July 1984, was current as of June 1993 with an outstanding balance of \$2,765.00. The account was charged off in October 1994 with \$3,000.00 owed.

In December 1993 Applicant opened an individual revolving charge account with a nationwide department store (creditor #3). A delinquent balance of \$331.00 was written off in December 1994.

In September 1994 Applicant opened a revolving charge account with creditor #4. High credit on the account was \$3,237.00. Due to non-payment, the account was placed for collection in December 1994 with \$3,237.00 owed.⁽³⁾

Applicant's credit card account with a large banking institution (creditor #5), opened in September 1988, which had been current through June 1993, was charged off in February 1995 with \$4,745.70 owed.

Applicant's individual revolving charge card with a nationwide credit company (creditor #6) was rated current as of June 1993 when the balance on the account was \$4,820.00. In February 1995, the account was charged off with a \$7,249.00 outstanding balance.

Due to the climate in state B, Applicant after several months there began to suffer asthma related respiratory problems and he required emergency treatment in a local hospital in January 1995. While out of work on a medical leave of absence, Applicant did not attend to any of debts which had been charged off. His fiance relocated to state B to take care of him and they subsequently married in August 1995. Applicant's health improved to where he was able to return to work, and he managed to earn more than \$50,000.00 that year.⁽⁴⁾ While living expenses and his automobile loan were covered, other accounts were ignored. In addition to the accounts previously charged off, Applicant failed to make payments on the following financial obligations:

Two unpaid medical bills incurred during his emergency hospital visit in January 1995 in the amounts of \$289.00 owed to creditor #7 and \$50.00 owed to creditor #8 were turned over for collection in July 1995 and November 1995, respectively.

Applicant's revolving charge with a home furnishings retailer (creditor #9), opened in November 1993, was charged off in July 1995 with a \$2,111.00 delinquent balance.

In January 1988 Applicant had opened an individual revolving charge card with a nationwide retailer (creditor #10). High credit on the account was \$3,600.00. As of June 1993, the account was rated as current with a balance of \$2,086.00. In November 1995, the account was charged off with \$3,133.00 owed.

Also turned over for collection in November 1995 were two accounts with creditor #11 for unpaid credit card purchases totaling \$385.40.

In December 1995 Applicant's employment with the defense contractor was terminated for "geographic and inflexible policy conflict."⁽⁵⁾ Unemployed for the next six months, Applicant was no longer able to make his automobile loan

payments and in April 1996 his car was repossessed. He remains liable to creditor #12 for the \$7,111.92 deficiency balance. [\(6\)](#)

Shortly thereafter, Applicant's charge account with an oil company (creditor #13), which he had held since October 1974, was charged off in May 1996 with a \$261.30 past due balance.

Applicant failed to remain current on his utility bills. As of June 1996, he owed \$166.00 to the power and light company (creditor #14) and \$406.00 to the city (creditor #15). These delinquent accounts were placed for collection in November 1996. [\(7\)](#)

In early July 1996 Applicant moved back to state A at his own expense where he obtained a job as a consultant. In August 1996, he began working for his current employer. Over the last six months of 1996, Applicant earned \$33,566.00 in salary. When added to his \$17,607.00 in military benefits, Applicant had an annual income in excess of \$50,000.00 even with six months of unemployment. Applicant turned the majority of his income over to his spouse to take care of her "significant" indebtedness, which left him with no available funds for his debts. [\(8\)](#)

In application for a security clearance for his work with his current employer, Applicant on September 20, 1996, executed a Standard Form 86 (SF 86) on which he responded affirmatively to inquiry into any debts delinquent over 180 days. He disclosed his debts to his creditors, but indicated his involvement in a repayment plan with those accounts which had been closed. Applicant indicated that his recent employment provided the opportunity to satisfy his delinquent debts.

On June 5, 1997, Applicant was interviewed by a Special Agent from the Defense Security Service (DSS), formerly designated as Defense Investigative Service. Applicant acknowledged he had made no payments toward the delinquent debts reported on his October 18, 1996 credit bureau report and expressed his intention to make during June 1997 and each successive month \$50.00 payments to creditors #1 and #9 and \$100 payments to creditors #2, #3, #4, #5, #6, #10 and #13. Furthermore, he stated he would pay creditor #7 \$100.00 on June 28, 1997, creditor #8 \$50.00 on June 7, 1997, and creditor #11 \$100.00 on June 21, 1997. He disputed the reported \$15,872.00 debt to creditor #12 and the alleged involuntary nature of the repossession. To his understanding, repossession terminated the contract with no further liability. If any monies were owed, he related he would work out an arrangement with the creditor. Applicant told DSS he was on the road to financial recovery and he executed a Personal Financial Statement, listing net monthly income (including \$800.00 from his spouse and \$1,387.00 military pension) of \$5,328.00 with monthly expenditures (excluding any payments on his old debts) of \$1,748.00 for a net positive remainder of \$3,310.00. [\(9\)](#) Applicant further advised the Agent that his financial situation was such that he could repay his debts on a regular basis and in a reasonable amount. He foresaw nothing that would prevent his repayment.

As of September 1997 Applicant had not made good on his promise to begin repayment of his bills. In addition to unexpected, uncovered dental, medical and vision bills which had to be paid, Applicant indicated that he had underestimated his monthly expenditures and that they amounted to approximately \$4,300.00. In July 1997, Applicant obtained a financial consultation. Based on advice that it would be "near impossible" to recover even with his annual employment income of \$58,336.00 and \$17,959.00 in military retirement, Applicant began the process of a Chapter 7 bankruptcy which he expected to file no later than September 12, 1997.

In mid January 1998 Applicant filed a voluntary petition as an individual debtor under Chapter 7 of the United States Bankruptcy Code, listing \$44,375.37 in unsecured nonpriority claims owed to twenty different creditors. [\(10\)](#) With monthly expenditures of \$5,216.00, including \$725.00 in rent, \$35.00 for cable television, \$325.00 in utility costs, \$150.00 for home maintenance, \$750.00 for food, and \$869.00 for his spouse's student and bank loans, he is currently operating at a monthly deficit of \$586.46. [\(11\)](#)

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 as amended 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, this Judge concludes the following with respect to criterion F:

As reflected in his Chapter 7 bankruptcy petition very recently filed in January 1998, Applicant is indebted in the aggregate of \$44,375.37 to twenty creditors.⁽¹²⁾ Financial indebtedness is of security concern when it is incurred or left unsatisfied under circumstances which suggest that the debtor is irresponsible, avaricious, or under financial duress likely to cause action contrary to the national interest. Applicant admits his indebtedness is significant and beyond his ability to repay, but maintains it was isolated to the May 1994 to August 1996 time frame and related to his job relocation to state B. Cited as the cause of his financial difficulties are the "significant loss" on the sale of his home in state A on his relocation, the "lingering effect" of his divorce, family and personal illness, loss of his employment in December 1995, his relocation back to state A at his own expense in July 1996, and his remarriage in August 1995. As set forth in the Adjudicative Guidelines pertaining to financial considerations, specifically mitigating condition (MC) 3., the Directive provides for mitigation where debts are caused by unforeseen circumstances beyond an individual's control such as loss of employment, unexpected medical emergency, divorce. While there is some discrepancy as to the amount of the loss associated with the sale of his residence,⁽¹³⁾ this financial setback was not due to any financial irresponsibility on Applicant's part. There is no evidence regarding any financial obligations following his divorce decree in 1988 so the effect of the divorce on his finances cannot be determined. Applicant's medical problems on moving to state B could not reasonably have been foreseen, although the only medical costs of record for which Applicant has been held responsible are in connection with an emergency room visit in January 1995 with a reported liability of only \$349.00, which to date remains unpaid. In his own words, "time and daily life escaped [him]" (Item 3, p. 3), he left mail unanswered and bills unpaid during his illness. However, his physical condition improved significantly to enable him to return to work and he earned over \$50,000.00 that year plus his military retirement. Applicant's failure to address his debts during the fall of 1995, when he was gainfully employed and not debilitated by illness, evidences financial irresponsibility on his part. With respect to the loss of his employment in December 1995, it is not clear whether Applicant voluntarily terminated or was fired. In any event, his failure to make any effort to repay his delinquent debts over the ensuing six months engenders, in contrast, little security concern due to his unemployment. Whereas his relocation to state A circa July 1996 was at his own election, costs related to the move were neither unexpected nor outside his control. Furthermore, as he had in the fall of 1995, he made no effort to repay his delinquent debts after he started his current position in August 1996. Despite annual earnings of \$58,336.00 and almost \$18,000.00 in military benefits, Applicant failed to make any payments toward his substantial delinquencies, some of which date back to 1994. In June 1997, Applicant promised to commence repayment of his debts. As his recent bankruptcy petition reflects, he did not make even a minimal effort to comply. Applicant submits that he did not have the financial means, notwithstanding his Personal Financial Statement whereon he reported a monthly surplus of \$3,310.00, as he learned his living expenses and spouse's bills amounted to \$4,300.00 in monthly expenditure. Assuming that figure is more accurate, based on his income and that of his spouse, that would still leave him with a net positive monthly remainder of \$1,028.00 which he could have applied to his indebtedness. Disqualifying conditions (DC) 1. (history of not meeting financial obligations) and 3. (inability or unwillingness to satisfy debts) apply in this case.

With respect to pertinent mitigating conditions, the unexpected circumstances of the initial job relocation and Applicant's subsequent illness serve to explain how he got behind in his financial obligations, but they do not extenuate his failure to make any effort, especially since August 1996, to repay his creditors. Currently indebted in the amount of \$44,375.37 to twenty creditors, the majority of which have been owed since the 1994/95 time frame, his financial problems are ongoing and certainly not isolated in nature. Applicant has not yet been granted a discharge in bankruptcy. Even assuming Applicant is afforded a fresh start and all the debts listed (which includes those in the SOR) liquidated, the manner in which he managed his finances in the past may nonetheless preclude the affirmative finding that he is security worthy. While Applicant has a legal right to discharge of his debts in bankruptcy and in that vein, resort to bankruptcy is not regarded in and of itself as a negative factor, security concerns persist because of his failure to attend to his financial responsibilities after becoming gainfully re-employed.

Those acts Applicant has taken of his own initiative to rectify his financial situation are limited to a financial

consultation in July 1997, and based on the advice afforded him during that consult, a recent bankruptcy filing. For favorable consideration of MC 4. Applicant must be either in counseling or have received counseling for the problem and there must be clear indication that the problem is being resolved or is under control. Applicant expected his bankruptcy filing to be completed no later than September 12, 1997. His petition was not filed until mid January 1998. It is not clear which debts, if any, will be discharged, so it cannot be said that his financial problems are resolved. In addition, bankruptcy is not considered a good faith effort to repay his overdue creditors or resolve his debts as Applicant's creditors, all unsecured, nonpriority claims, will not be repaid in the case of a discharge. Furthermore, assuming the creditors file no objection and Applicant is discharged of his legal responsibility to repay those debts listed on the petition, Applicant's current financial situation engenders ongoing security concerns. On his Schedule I, Applicant calculated his combined monthly income as \$4,629.58. With the \$5,216.00 in monthly expenses reported on his Schedule J, he is operating at a monthly deficit of \$586.46. While Applicant has taken over the family finances, he has not demonstrated a sufficiently favorable change in financial habits. This Administrative Judge is unable to conclude that Applicant's criterion F behavior is behind him. Accordingly, adverse findings are warranted with respect to subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., 1.k.(1), 1.k.(2), 1.l. and 1.m. 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.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.(1): Against the Applicant

Subparagraph 1.k.(2): Against the Applicant

Subparagraph 1.l.: Against the Applicant

Subparagraph 1.m.: 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. While bearing a date of September 3, 1997, Applicant's answer to the SOR was notarized on September 4, 1997.
2. The October 29, 1997 credit bureau report reflects a settlement was accepted on this account and a last activity date of August 1995. In his bankruptcy filing of January 1998, Applicant listed two debts owed to this creditor, one in the amount of \$1,320.00. It is inferred he made no payment on the account after it was charged off. The \$3,500.00 balance alleged in SOR subparagraph 1.d. covers both accounts.
3. In his response to the FORM, Applicant objected to Department Counsel's position based on an October 29, 1997 credit bureau report that Applicant has 16 accounts in collection/charge off totaling \$26,482.00, an increase from the 13 accounts and \$21,791.00 aggregate debt listed on his October 1996 credit report. Applicant submits he owes creditor # 4 \$3,237.00 as opposed to the \$4,119.00 reported collection balance. While the reported increase may be due to collection costs, there is insufficient evidence to conclude that he owes the greater amount.
4. In his bankruptcy petition filed January 16, 1998, Applicant reported his annual salary at his current employment of \$58,336.00, earnings as a contractor in 1996 of \$33,566.00, and for his work for a defense contractor in state A of \$52,153.00. In addition, he received more than \$17,000.00 in military retirement benefits over the last three years.
5. Applicant indicates that he lost his job. On his security clearance application, Applicant reported he "left for other unfavorable circumstance" which was described as "geographic and inflexible policy conflict." Whether he resigned voluntarily or was terminated, the salient fact is that he no longer had the income from that job..
6. The credit bureau reports of October 1996 and October 1997 indicate a \$15,872.00 loan balance with \$748.00 past due at the time of an involuntary repossession. Applicant claims that the repossession was voluntary and that he owes rather a debt deficiency balance of \$7,111.92 as reflected on his bankruptcy petition. It is reasonable to infer that Applicant checked with the creditor before he filed his bankruptcy schedules. Whether Applicant voluntarily surrendered the car or it was taken involuntarily, it does not eradicate the debt.
7. These debts are in addition to those alleged in the SOR.
8. Applicant indicated in response to the SOR that after reviewing his credit file in August 1996, he made payments to "two important debtors and shortly thereafter learned of [his] wife's significant debts that she could no longer take care of. [He] turned the majority of income over to her to satisfy her debts as well as living expenses." Item 3, p. 3. He did not identify the two creditors or the nature or extent of his spouse's debts.
9. Monthly expenses were listed as \$600.00 in rent, \$250.00 for groceries, \$100.00 in clothing, \$268.00 for utilities, \$310.00 in car expenses, \$20.00 in medical expenses and \$200.00 in miscellaneous costs. See Item 5, p. 3.
10. This includes the debts alleged in the SOR.
11. Applicant's combined monthly income, reported on his bankruptcy petition as \$4,629.58, does not include any spousal income.
12. In addition to the debts set forth in the SOR, Applicant's Schedule F includes a \$2,898.07 debt for credit card purchases, \$1,822.53 for travel related credit card charges, and \$4,584.10 on a loan obtained from a credit union. The two debts to creditor #1 are listed separately in Schedule F.
13. In response to the SOR, Applicant indicated he lost \$18,000.00 on the sale of his home. (Item 3, p. 3). In rebuttal to the FORM, however, he lost \$16,000.00.