

DATE: February 3, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0501

DECISION OF ADMINISTRATIVE JUDGE

JOHN R. ERCK

APPEARANCES

FOR GOVERNMENT

Michael H. Leonard, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On July 22, 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.

Applicant responded to the SOR in writing on August 12, 1997 and requested a hearing before a DOHA Administrative Judge. The case was reassigned to this Administrative Judge on November 19, 1997 because of illness in the family of the Administrative Judge to whom the case had been previously assigned. On December 10, 1997, a hearing was convened for the purpose of considering whether it is clearly consistent with the national security to grant, continue, deny, or revoke Applicant's security clearance. The Government's case consisted of seven exhibits; Applicant relied on nine exhibits, on his own testimony and the testimony of one witness. Applicant submitted one additional exhibit after the hearing had adjourned, but within the time allowed for the submission of additional documents at the conclusion of the hearing. A transcript of the proceedings was received on December 17, 1997.

FINDINGS OF FACT

Applicant has admitted, with explanation, the factual allegations pertaining to financial considerations (Criterion F) set forth under subparagraphs 1.a. and 1.g. He has denied the allegations set forth under subparagraphs 1.b., 1.c., 1.d., 1.e., 1.f., 1.h., 1.i., 1.j., 1.k., 1.l., and 1.m.

Applicant is a fifty-one year old employee⁽¹⁾ of a defense contractor. He has a Bachelor's Degree in Physics and Mathematics, and a Masters Degree in Management. Applicant had held a clearance for sensitive compartmentalized information from 1968 to 1987 (Gov. Exh. 1), and a secret clearance from 1987 to the present (Tr. 7). A favorable

preliminary determination could not be made on Applicant's current suitability for a security clearance because of financial considerations.

Applicant's financial problems began in the mid to late 1980's when debts totaling more than \$49,000.00 caused him to file bankruptcy in 1988. Prior to filing bankruptcy, Applicant had gone through a divorce and had been unemployed from July 1987 to April 1988. When he finally found another job, it was at an annual rate of remuneration (\$40,000.00) that was much lower than his former employment (\$60,000.00 - see Gov. Exh. 7). Seeking a better employment opportunity more recently, Applicant relocated from State A to State B in April 1995 (Gov. Exh. 4) where he currently resides. Since relocating, his salary and employment history have continued to be somewhat erratic.⁽²⁾ His initial salary upon moving was \$71,000.00 annually. However, within two months of relocating, the "bottom dropped out" (Tr. 58-59) because a major contract had been terminated. As a result, he ended up working at a salary that was less than half of what it was initially. He changed jobs in November 1995 and worked until March 1996 for a company which paid him subsistence (to cover groceries and rent) but no salary. When he was interviewed by the Defense Security Service (DSS) in January 1997, he indicated that his current, annual salary was \$47,000.00 (Gov. Exh. 4). However, this employer laid Applicant off on September 2, 1997; and he continued to be unemployed as of the date of his hearing, except for "a few hours here and there" by his former employer (Tr. 43).

Because of periods of unemployment, low salaries, and his 1988 divorce, Applicant has accumulated a considerable amount of debt which he has been unable to satisfy. The SOR alleges that his delinquent obligations total more than \$58,000.00. Applicant's principal indebtedness has been to the IRS, an obligation began to accrue in the late 1980's when he stopped filing tax returns. According to his testimony, he stopped filing federal income tax returns after becoming involved in a partnership/tax shelter which initially increased his tax liability beyond what his income would permit him to pay (Tr. 39-40, 96-98). He had invested \$30,000.00 (his life's savings) in this partnership with the expectation that he would nearly double his money over the ten-year life of the investment (Tr. 39-40). For reasons that he does not understand, the general partner was able to liquidate the partnership--in which he had invested--and he lost his entire investment except for a distribution of \$11,000.00 in 1989 (Tr. 39-40). He testified that he paid \$7,000.00 of that amount in taxes. Because he had lost almost his entire investment, he did not have the resources to pay off his indebtedness to the IRS. For several years after his loss in the partnership/tax shelter, Applicant was afraid to contact the IRS and work out a repayment schedule. Since contacting them, he admits that the people with whom he has spoken have been "helpful" and "actually nice" (Tr. 78).

When Applicant was interviewed by the Defense Security Service (DSS) in January 1997, he had filed his federal income tax returns for 1995, but still had not filed his returns for 1988, 1989, 1990, 1991, 1992, 1993 and 1994. He indicated that a November 1996 notice from the IRS had informed him of a federal income tax obligation totaling \$31,556.83 (Gov. Exh. 4). In the signed, sworn statement prepared incident to that interview, Applicant promised to contact the IRS in order to work out a reasonable settlement agreement.

At his Administrative Hearing, Applicant proffered evidence that he had filed his federal income tax returns for tax years 1988, 1990, 1991 and 1992 (Applicant's Exhibits A, B, C and E). These returns reflect a total tax obligation of \$8,583.00 for those tax years; however, he testified that a recomputation of his taxes for those years--without penalties and interest--is estimated to be between \$4,500.00 and \$5,000.00 (Tr. 36).⁽³⁾ He is attempting to work up an offer in compromise. Applicant also proffered evidence that he had payments of \$350.00 and \$393.00 to the IRS pursuant to an agreement he had entered into with them in (Applicant Exh. H, Tr. 42). After he was laid off in September 1997, he passed that information on to the IRS (Tr. 95).

Subsequent to the hearing, Applicant submitted evidence that \$2,461.31 from his 1995 federal tax return and \$1,507.00 from his 1996 federal tax return had been applied to his delinquent tax obligation. Even after adding in these payments, the evidence in the record does not support Applicant's assertion that his federal tax obligation has been reduced from the amount (\$39,132.30) alleged in the SOR to between \$4,500.00 and \$5,000.00 (Tr. 36-37).

Because of his indebtedness to the IRS, he was afraid of the IRS and did not file his federal income tax returns for tax years 1988 to 1994 until shortly before his Administrative Hearing. He has recently worked out a repayment schedule with the IRS and had been making payments in accordance with that schedule when he was laid off by his current employer on September 2, 1997.

He has contacted the IRS and informed them of the lay off (Tr. 95).

Applicant owes lesser amounts to other creditors. He owes the Department of Taxation of State A \$7,698.70 in back income taxes for tax years 1988 and 1990 (Tr. 45-46). He claims that he actually owes less than the alleged amount because that amount is based on erroneous information, i.e, that he was single and did not have any dependents. He testified that he wrote the Department of Taxation a letter "once years ago" and received an acknowledgment that they had "made an error" (Tr. 45). He did not proffer any evidence of his earlier communication and presented no evidence of recent contact with the Department of Taxation of State A.

He owes the municipality in State A--where he resided until April 1995--\$7,000.00 for unpaid municipal income taxes which accrued from 1988 to 1994 (Tr. 46-47). He explained at his Administrative Hearing that this indebtedness had accumulated because he did not realize that he resided within the boundaries of the municipality that imposed the tax. Before relocating to State B, Applicant had entered into an arrangement with the municipality and had been making payments. He stopped making these payments when he was laid off of his job and had to relocate.

Applicant owes Creditor A \$125.00 for a dental bill that was placed in collection in April 1993. He testified that this bill should have been paid by his insurance carrier. He claimed that the responsible insurance company is currently being investigated for insurance fraud (Tr. 48). He proffered no evidence on the status of this claim other than his testimony. He intends to pay this bill when he is fully employed (Tr. 54-55)

Applicant owes Creditor B \$51.00 for an account referred for collection in June 1994. This amount is an unpaid medical bill which Applicant owes to a plastic surgeon for treating his son's facial lacerations (Tr. 49). He intends to pay this bill (Tr. 54-55).

Applicant owes Creditor C \$2,869.00 on a credit card account that was charged off as a bad debt in November 1995. He had incurred this indebtedness while on travel for a former employer. Although his employer reimbursed him for this travel, he was laid off shortly after completing the travel, and subsequently applied the reimbursement toward current living expenses rather than toward paying off the credit card (Tr. 49-50). He intends to pay this bill when he is fully employed (Tr. 54-55).

Applicant owes Creditor D \$203.00 on an account referred for collection in March 1995. He testified that this bill should have been paid by insurance. He did not proffer any evidence to support his testimony. He intends to pay this bill when he is fully employed (Tr. 54-55).

Applicant owes Creditor E \$300.00 for a medical bill that was written off as a bad debt in March 1995. He testified that this bill should have been paid by insurance. Again, he did not proffer any evidence to support his testimony. He intends to pay this bill when he is fully employed (Tr. 54-55).

Applicant he owes Creditor F \$100.00 for medical services received in June 1995. He does not believe this obligation is his since it was incurred in State A and he had relocated to State B in April 1995 (Tr. 53-54).

Applicant owes Creditor G \$176.00 for a medical bill that was referred for collection in August 1995. He does not believe this obligation is his since the creditor resides in State A and he had relocated to State B in April 1995 (Tr. 53-54).

Applicant owes Creditor H \$234.00 for medical bills that were referred for collection in October 1995. Again, he does not believe this obligation is his since the creditor resides in State A and he had relocated to State B in April 1995 (Tr. 53-54).

Applicant owes Creditor I \$398.00 on a telephone bill referred for collection in August 1995. He testified that he thought he had paid the bill before he moved from State A (Tr. 55).

In addition to the delinquent obligations alleged in the SOR, Applicant has fallen behind on other obligations as a result of being laid off on September 2, 1997. He testified that he is currently two months behind on his car payments (Tr. 94)

and has not been making payments on his credit card (Tr. 95).

A letter from his most recent supervisor describes Applicant as a very valuable and capable employee who always accomplished his duties with a minimum of supervision. To establish that he lives a responsible lifestyle within his income, Applicant called a neighbor as a character witness. She testified that Applicant is a very honest and responsible person who spends a considerable amount of time working with the Boy Scouts. He does not drink, smoke, or party. Most of the furniture in his house was purchased at garage sales.

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 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)

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 raised a security concern and may be disqualifying include:

- (1) A history of not meeting financial obligations;
- (3) Inability of 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);
- (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 facts alleged in the Statement of Reasons. If the Government establishes its case, the burden or 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.

There is persuasive evidence that Applicant has had financial problems for at least ten years. According to his testimony and information in the record, he fell behind in his financial obligations after he lost his job in July 1987. Ten months of unemployment and a divorce during 1988 caused him to file for bankruptcy and to the discharge of his debts in March 1989. Since then additional periods of unemployment or under-employment, together with a failure to file or pay federal, state, and municipal income taxes have brought him to his current status, where he is in arrears in financial obligations totaling more than \$50,000.00--even if he is given maximum credit on his efforts to resolve his obligations under the federal income tax.

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Favorable consideration has been given to evidence that Applicant has had significant periods of unemployment or underemployment. He experienced a considerable financial setback as the result of a bad investment; he has had to recover from a costly divorce which left him with a substantial child support obligation. He incurred considerable expense in moving himself and his family from one part of the country to another in April 1995. There is no evidence that any of Applicant's current indebtedness has resulted from frivolous or extravagant expenditures for entertainment or hobbies. Most of his debts--other than the IRS obligation--are attributable to medical expenses for himself or his son. Favorable consideration has also been given to Applicant's favorable history of working with classified documents. In the more than 30 years that he has held security clearances--including a clearance which allowed him to access sensitive compartmentalized information--there is no evidence that he has every been accused or suspected of mishandling classified documents.

Prior to being laid off in September 1997, Applicant had made some progress in addressing the indebtedness problems which have raised a security concern in his case. He had neglected these problems for years before the DSS questioned him about his finances in January 1997. It had been years since Applicant had corresponded with the state and municipal taxing authorities of State A--to whom he owes almost \$15,000.00. He has recently concentrated on resolving his most significant delinquent obligation--his indebtedness to the IRS. In July and August 1997, he had made payments totaling more than \$700.00 on this obligation. While his fear of the IRS may not have been irrational in view of the recent, highly publicized disclosures about IRS misconduct, Applicant cannot be excused for completely ignoring this important responsibility, to the point where he did not even file his federal income tax returns for several years. In fact, he has admitted that his dealings with the IRS--after he contacted them--have been more pleasant than he had anticipated.

Applicant has impressed this Administrative Judge as an honest and sincere person who cannot imagine even harboring the thought of betraying his country. The issue in this context is not whether he is likely to betray his country for money, but whether he has demonstrated sustainable progress in addressing his extensive, delinquent financial obligations. Applicant was making some progress, but that progress ceased as of early September 1997 when he was laid off from the job he had held since March 1996. Since then, he has fallen further behind; he is two months behind in his car payments and has been unable to make payments on his credit card. While he expresses optimism about his ability to resolve his financial predicament, Applicant's erratic employment history--going back at least ten years--does not inspire confidence and give this Administrative Judge cause to share that optimism. In order to extricate himself from his current financial predicament, Applicant requires consistent employment at an annual salary of at least \$50,000.00. Employment at that salary for brief periods of time followed by months of unemployment--as has been his history for the past ten years--will not enable him to resolve his financial problems. In fact, Applicant had made very little progress in paying down his delinquent obligations in the 18 months he was employed by his most recent employer at an annual salary of \$47,000.00. Criterion F is concluded against Applicant.

FORMAL FINDINGS

Formal Findings are 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. 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 continue Applicant's security clearance.

John R. Erck

Administrative Judge

1. Applicant had been laid off by his employer on September 2, 1997 (Tr. 43); he hopes to return to work sometime in the future.
2. No negative inferences about Applicant's character have been drawn from his employment history; however, this history cannot be ignored in assessing his present and future financial viability.
3. Applicant did not indicate the basis for this recomputation