DATE: April 24, 1998

In Re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 97-0648

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Michael H. Leonard, Esq., Department Counsel

FOR APPLICANT

Clarence D. Bell, Jr., Esq.

STATEMENT OF THE CASE

On October 1, 1997, 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, and amended by Change 3, February 13, 1996, issued a Statement of Reasons (SOR) to 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 Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant filed his Answer to the SOR on November 1, 1997. The case was received by the undersigned on December 15, 1997. A notice of hearing was mailed on December 22, 1997, and the case was heard on January 27, 1998. The Government and Applicant submitted documentary evidence. Testimony was taken from Applicant. The transcript was received on February 4, 1998.

RULINGS ON PROCEDURE

At the hearing, paragraph 2 and subparagraph 2a were deleted from the SOR because declaration and execution of the bench warrant does not constitute criminal conduct under the laws of the state.

On March 9, 1998, Applicant offered a computer printout from the domestic court indicating an adjustment of the support arrearage as probative "...on the propensity of Mr. [Applicant] to take care of his support debt." Even though Applicant made no request to keep the record open at the close of the hearing, Applicant's post-hearing submission shall be admitted in evidence over the Government's objection. The payment constitutes relevant evidence and achieves the Directive's objective to promote the development of a full record. Even though the printout is now in the record, the weight to be given the evidence must be weighed and balanced against (1) when the debt was created; (2) action taken by Applicant to satisfy the debt before he was informed by the Defense Investigative Service (DIS); (3) Government Exhibit #3 (GE #3); and, (4) any other evidence which provides insight on the payment of the debt. Accordingly, the

Government's objection to the admissibility of the printout is overruled. Applicant's three page document, dated March 9, 1998, the Government's one-page objection to the additional exhibit, and Applicant's one page letter dated April 6, 1998 (identifying an error in the March 9 letter), is marked and admitted in evidence as Applicant's Exhibit Q (AE Q).

FINDINGS OF FACT

The Following Findings of Fact are based on the documentation and testimony. The SOR alleges financial considerations (Criterion F). I have reviewed the transcript, evaluated witness credibility and examined the exhibits. Applicant is 35 years old and employed for approximately a year as a computer specialist electrician by a defense contractor. He seeks a secret clearance.

Applicant is indebted to a collection agency in the amount of $4,170.45, for a defaulted student loan which he received in 1983, and referred for collection on May 13, 1991.(1) While he claims he contacted the education department and the collection agency several times between 1991 and 1997 to establish a repayment plan, he indicated he would not repay the loan as long as the education department and the collection agency continued to refuse to institute a repayment plan instead of a lump sum payment in satisfaction of the entire debt. (GE #2)(2)

Applicant was indebted to the domestic relations court in the amount of $17,856.17, for a judgment entered against him in October 1996 for non-payment of child support.(3) A civil bench warrant for Applicant's arrest was issued on February 21, 1995 for failure to appear on the child support case, which ended in the October 1996 judgment for non-support. In July 1997, Applicant indicated he had the money to pay the child support judgment but would not because he believed the courts were against dependent children's fathers. (GE #2)

According to AE L, Applicant made an offer to compromise the child support arrears in November 1997. On January 5, 1998, the director of child support enforcement denied Applicant's offer of compromise of the arrears because Applicant did not fully comply with a child support order requiring him to pay $100.00 a week from July 15, 1991 to July 15, 1995. Second, court records showed he paid $3,136.00 from 1991 through December 31, 1995, but the arrearage had risen to $17, 364.00. Third, while acknowledging his irregular employment between 1990 to May 1995 and a medical condition,(4) the director noted Applicant's employment had been fairly regular from May 1995 to January 1998, except for a period of unemployment from October 1996 until he was hired at his current employment in January 1997.(5)

Applicant's supervisor's supervisor believes Applicant is a knowledgeable and trustworthy individual. By the end of the 1998, Applicant will have taken a number of tests to certify as a systems engineer.

I find that Applicant established a repayment plan with the education agency and has made three or four payments toward satisfaction of the debt.(6) I also find that Applicant took steps in October 1997 to have the bench warrant removed. Finally, I find that Applicant paid $8,682.00 in February 1998 to satisfy the amount of money he owes for support of his children. However, it is impossible to find Applicant voluntarily paid these debts. On the contrary, Applicant took no documented action on the child support judgment until after he was advised by DIS in August 1997 that there was an outstanding bench warrant.(7) While he claims that he made several attempts between 1991 and 1997 to set up a repayment plan with both the collection agency and the education agency, there is no evidence of action taken toward satisfaction of either debt until October 1997 when the education agency notified Applicant they were about to execute a garnishment against his wages. Applicant's demonstrated practice of paying debts only by order of legal process rather than on a voluntary basis, casts a heavy cloud over Applicant's judgment.

POLICIES

Enclosure 2 of the Directive sets forth policy factors which must be given binding consideration in making security clearance determinations. These factors must be considered in every case according to the pertinent criterion; however, the factors are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the entire realm of human experience or that the factors apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility

of witnesses. Factors most pertinent to evaluation of the facts in this case are:

Financial Considerations (Criterion F)

Factors Against Clearance:

1. a history of not meeting financial obligations;

2. Unwillingness to satisfy debts.

Factors for Clearance:

None.

General Policy Factors (Whole Person Concept)

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at page 2-1 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; and, (8) the likelihood of continuation or recurrence.

Burden of Proof

As set forth in the Directive, every personnel security determination must be a fair and impartial overall common sense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information in the future. The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must establish all the factual allegations under **financial considerations** (Criterion F) which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to the sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation which demonstrates that the past adverse conduct is unlikely to repeat itself and Applicant presently qualifies for a security clearance.

CONCLUSIONS

Applicant has a history of not meeting financial obligations. The evidence reflects Applicant received the education loan in early 1983 and was required to start making payments on the loan six months after graduation. According to GE #2, he graduated in 1984. There is no evidence of any repayments on the education loan until after garnishment was threatened in October 1997. There is no evidence of action taken by Applicant to address the child support arrearage until after Applicant was advised by DIS in August 1997 that there was a warrant out for his arrest.

In addition, Applicant has demonstrated his unwillingness to satisfy his debts with his sworn statement in July 1997 (GE #2) that he had $30,000 savings but was not going to repay either debt unless he was able to structure a repayment plan. Given the absence of evidence of voluntary repayment on either debt until after legal action was taken and after he was advised of the bench warrant for his arrest, there is no reason to believe Applicant would have started paying back his

creditors earlier had he been offered a chance to pay in installments.

Even though the number of creditors that Applicant owes has been reduced to one and even though the overall amount of debt is less than $4,170.45, I am not persuaded that Applicant's medical condition played any significant part in causing him to fall so far in arrears in the support payments. While his employment from 1990 to May 1995 was erratic, Applicant had reasonable opportunities after May 1995 to demonstrate good judgment by complying with the support order or paying off the education loan entirely.

The record contains no evidence that Applicant has or is receiving financial counseling for his indebtedness and there is no indication the problem is under control. Without counseling or any independent and good-faith effort to resolve his financial problem and the way he handles his finances, Applicant has failed to persuade me that his thought process has changed so that the past and present indebtedness will not be repeated in the future. Accordingly, Applicant's positive character evidence and remedial action taken to satisfy his creditors is insufficient to carry his ultimate burden of persuasion under financial considerations.

After weighing the facts of this case with the variables under the whole person concept, Applicant has failed to overcome the Government's case as there unsatisfactory evidence in rehabilitation or evidence of pertinent behavioral changes to prevent a recurrence of the indebtedness in the future. Applicant's failure to act until threatened with garnishment and after the initiation of the security investigation, raises significant doubt regarding Applicant's judgment and his overall suitability for a security clearance.

FORMAL FINDINGS

Having weighed and balanced the specific policy factors with the factors listed under the whole person concept, Formal Findings of fact are as follows:

Paragraph 1(**financial considerations**): AGAINST THE APPLICANT.

a. Against the Applicant.

b. Against the Applicant.

DECISION

In light of all the circumstances presented in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Paul J. Mason

Administraitve Judge

1. Applicant's Exhibit F (AE F) reflects that the education agency notified him of an intention to garnish his wages on October 2, 1997. Applicant entered in a repayment plan on October 16, 1997 (AE E), and has made three installments of $170.00 in October, November and December 1997. (AE D) He made an additional payment but misplaced the payment stub. (Tr. 31)

2. Also, Applicant testified he never made any payments after the loan went into default. (Tr. 61-62)

3. Applicant had three children by his former girl friend who he lived with from 1985 to 1991.

4. Applicant's total payments of $3,136.00 in child support came from unemployment compensation and confiscation of an Internal Revenue Service tax refund check for 1995.

5. AE Q reflects that Applicant paid the domestic support authorities $8682.00 in satisfaction of the arrears judgment.

6. Applicant was supposed to start repaying on the loan six months after he graduated in 1984. (GE #2)

7. There is no independent evidence corroborating Applicant's claims he was providing support payments for various purposes.