

DATE: March 9, 1999

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 98-0703

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Esquire, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On October 23, 1998, the Defense Office of Hearings and Appeals (DOHA), issued a Statement of Reasons (SOR) to the Applicant that 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. The SOR was issued pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended by Change 3. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On November 14, 1998, Applicant responded to the allegations set forth in the SOR and requested a hearing before an Administrative Judge. The case was assigned to another Administrative Judge on December 10, 1998. Because of caseload considerations, the case was reassigned to me on January 20, 1999. On January 26, 1999, a Notice of Hearing was issued, setting the hearing for February 18, 1999, on which date the hearing was conducted. The Government did not call any witnesses, but introduced three exhibits (Government's Exhibits (GX) 1 - 3) Applicant testified and offered four exhibits (Applicant's Exhibits (AX) A - D). The transcript was received on March 5, 1999.

In response to my agreement to keep the record open for a short time to allow him to submit additional documents, Applicant timely submitted an undated letter with 12 pages of attachments and a second undated one-page letter from Applicant. Department Counsel did not object to their admission into evidence. The two documents have been identified as AX E and F, respectively, and admitted into evidence.

FINDINGS OF FACT

The Government opposes Applicant's request for a continued security clearance, based on the 10 allegations set forth in the attached SOR, under Criterion F (Financial Considerations). After a thorough review and analysis of all the evidence in this case, oral and documentary, including Applicant's admitting of SOR 1.b., 1.c., and 1.d., I make the following findings of fact as to each of the allegations in the SOR:

Applicant is a 42-year-old project computer administration engineer for a defense contractor. He has been so employed since February 1997. Prior to his current position, he was similarly employed, from November 1991 to January 1997, by another computer company headquartered on the east coast.

SOR 1.a. - Applicant was indebted to Company A, a car dealer, in the amount of \$917.00, for a judgment filed against him in about January 1992. As of July 10, 1998, the date of his sworn statement to an agent of the Defense Security Service (DSS), this debt had not been satisfied.

As of July 10, 1989, Applicant "no longer [had] the vehicle" and believed he had "paid the vehicle off in full" (GX 3). He promised to "look into the matter and clear it up" (Id.). At the February 18, 1999 hearing, Appellant testified that the company had gone out of business and applicant "need[s] to contact the credit bureau" (Tr at 27 -28). Applicant admits the debt but will be asking the credit bureau to remove the judgement from the credit report because the company is no longer in business (Tr at 28). He completed a form to do this on December 4, 1998, but had not yet mailed it in because he was "extremely busy" at work (Tr at 28 -29).

As part of Applicant's post-hearing exhibit E, Applicant submitted a copy of a letter from an attorney for the creditor named in SOR 1.a. The letter cites an agreement that Applicant will pay off the amount due (now about \$1,333.00) over a period of six weeks.

SOR 1.b. - Applicant was indebted to Dr. B, in the amount of approximately \$225.00 for a judgment filed in about January 1993. As of July 10, 1998, this debt had not been satisfied.

As of July 10, 1998, Applicant believed his doctor may have treated Applicant's children, for whom Applicant was listed as the responsible party. Applicant was not aware of the debt until so informed by the DSS agent and intended to "try to get this matter cleared up" (GX 3).

As of February 18, 1999, Applicant had tried to get information about the doctor from the mother of his children, but had done little else, and had not actually contacted the doctor about the debt (Tr at 19 - 27). Applicant testified that the "matter will be resolved this afternoon" (Tr at 27).

As part of a post-hearing exhibit (AX E), Applicant submitted a copy of a February 19, 1999 letter from an attorney showing the debt to the doctor/creditor in named in SOR 1.b., "was paid in full on January 15, 1993" and was "reported settled and satisfied with the . . . court on that date."

This evidence is helpful in that it shows the judgment against Applicant was settled in 1993 but it also confuses matters since Applicant testified he was not aware of the debt until so informed by DSS in 1998.

SOR 1.c. - Applicant was indebted to State C for tax year 1989, in the amount of approximately \$3,045.00, based on a tax lien that was filed in about April 1993. As of July 10, 1998, this debt had not been satisfied.

As of July 10, 1998, Applicant had not been aware of the tax lien until so informed by DSS.

Applicant claimed it was a mistake by State C, since that state was only the headquarters location of his employer, and he had actually lived in and paid income taxes to another state. He promised to clear up the matter (GX 3).

At the hearing on February 18, 1999, Appellant testified that he had spoken with the State C tax authorities about the 1998 tax lien by which \$200.00 per paycheck is being taken out every week. (Tr at 34). He explained to state C authorities that he had been paying state taxes in the other state, where he had resided during the tax year in question. As of December 1998, Applicant had paid State C \$2,150.00 and owed "less than \$1,000.00 more" (Tr at 35). Applicant expects that once the State C tax debt has been paid off, the other state has "got to give me money back because I basically paid it twice" (Id.). On December 4, 1998, Applicant completed a form asking the other state for a copy his 1989 state income tax return (AX B) but there apparently has been no response yet (Tr at 35).

It was not made clear how Applicant's paying income taxes to two states for 1989 will be resolved.

SOR 1.d. - Applicant was indebted to Company D, in the amount of approximately \$4,125.00 for an unpaid account turned over to a credit collection agency in August 1994. As of July 10, 1998, this debt had not been satisfied.

This debt was for karate lessons for Applicant's son. Applicant believed he was paid up when he moved from the area and was "only recently aware that they say I owe \$4,000.00"(GX 3).

As of the date of the hearing, February 18, 1999, Applicant testified that he had contacted the creditor and made arrangements to make payments, but that he was not going to actually start doing so until after his tax and child support obligations were cleared up (Tr at 36). He contacted the creditor "several months ago" but hasn't received anything on paper yet (Tr at 37). He intended to start paying "this month [February] and pay off the \$4,125.00 over ten months (Tr at 39). There is no documentation of this claim.

SOR 1.e. - Applicant was indebted to an automobile rental company E in the amount of approximately \$600.00, for a judgment entered against him in about 1995, for damage to a rental car. As of July 10, 1998, this debt had not been satisfied.

As of July 10, 1998, Applicant claimed this debt arises from his 1995 rental of a car that the car rental company later claimed he had dented. The company took Applicant to court but he failed to appear and he believed the company had obtained a judgment for about \$600.00. Applicant did not pay the judgment "out of principle," but "would do so if absolutely necessary" (GX3).

As of the date of the hearing, February 18, 1999, Applicant had contacted the creditor and had agreed with a manager that he would be paying off the debt. He expects to make one payment in March for the full amount due, \$578.25 (Tr at 40 -41). There is no documentation of this claim.

SOR 1.f. - Applicant was indebted to a mobile phone company F, in the amount of approximately \$1,222.00 for an account unpaid since about February 1995. As of July 10, 1998, this debts had not been satisfied.

On July 10, 1998, Applicant claimed the bill was for charges run up without his knowledge on his car's mobile phone by friends to whom he had lent the car. Applicant stated he was aware of the bill and intended to pay it (GX 3).

As of the date of the hearing, February 18, 1999, Applicant called a number on an old bill he had but the number was no longer valid. Applicant hasn't "done anything else" to locate the creditor because he didn't "want to overextend [himself]" (Tr at 42). He expects to try again after paying off the creditor named in SOR 1e (Tr at 43).

Applicant's post-hearing exhibit F is a letter from Applicant, bearing a facsimile date of February 25, 1999, in which Applicant states that he has contacted the creditor named in SOR 1.f., was informed that the company computer was offline and that a few more days would be necessary before the company could check its records about the approximately \$1,222.00 he owes. As of today, March 9, 1999, I have not received any follow up from Applicant. [\(1\)](#)

SOR 1.g. - Applicant was indebted to an individual G who sold Applicant a car. Applicant failed to pay the full price for the car, and a judgment was entered against him in about 1996 for approximately \$300.00. As of July 10, 1998, this debt had not been satisfied.

As of July 1998, Applicant had paid \$900 as part payment of \$1,500.00 he had agreed to pay for the car. After driving the car, he noticed rotting floor boards and refused to pay the remainder of the money because the seller "hadn't been honest" (GX 3). The seller went to court and obtained a judgment for \$300.00, which applicant has refused to pay "out of principle," but would do so "if absolutely necessary" (GX 3).

As of the date of the hearing, February 18, 1999, Applicant testified that the full price was actually \$1,200.00 (not the \$1,500.00 cited in GX 3), that he did appear in court and lost (Tr at 44), and that he later decided he would not pay the judgment. He recognizes the decision was "a bad choice" (Tr at 44 - 45). If he can locate the seller, he will "pay her to clear my record" (Tr at 46).

SOR 1.h. - Applicant was indebted to credit card company H, in the amount of approximately \$510.00, for an account

unpaid since about June 1996. As of July 10, 1998, this debt had not been satisfied.

On July 10, 1998, Applicant claimed this charge was for purchases made by someone who had stolen his credit card. Applicant contacted the credit card company and explained the situation but the company has not responded to his requests and no action had been taken except, apparently, to enter the negative information on Applicant's credit history. Applicant intended "to pay this bill to clear it off [his] credit report" (GX 3).

At the hearing, applicant testified that he had paid off about \$210.00 of this \$510.00 debt, but did not have the "letter of release with him" (Tr at 48 - 51). This letter has not been submitted by Applicant.

SOR 1.i. - Applicant was indebted to State I for approximately \$6,020.00 in past due child support, in arrears since about January 1997. As of July 10, 1998, this debt had not been satisfied.

Applicant has two children by a "former girlfriend." By agreement between them he "sent her money [for the children] on a regular basis" (GX 2). In 1995, she took him to court and he was ordered to pay about "\$140.00 per week through the court for child support, and the money was taken out of his paycheck at his then employer. When he left that firm in January 1997, he once again sent money directly to the mother of his children.

State officials subsequently contacted him and said he owed \$6,000 in child support. Appellant provided the state with copies of money transfer and money orders showing he had been paying \$400.00 - \$500.00 per month in child support. As of July 10, 1998, Appellant was to again send \$140.00 per month through the state authorities (GX 2). Notwithstanding Appellant's figures, a notice from state authorities, dated January 27, 1999, shows "an arrearage in the amount of \$15,055.60, as of that date (AX C). At the hearing, Applicant was unable to explain where this much larger debt came from (Tr at 52 - 53). The state is now taking \$175.00 per week from his paycheck "to pay back a total of \$15,500.00" (Tr at 53).

Applicant's exhibit D contains copies of proofs of payment to the mother of his children. They cover the period from the end of 1996/early 1997 to January 1997 to October or November 1998 (Tr at 56 - 58). He hopes that the state child support agency will take this into account and lower his remaining child support obligation. There is no evidence that anything has happened yet on this debt.

SOR 1.j. - As of July 10, 1998, Applicant was financially capable of paying the debts listed above at SOR 1.a. - 1.j., as evidenced by a monthly net remainder of approximately \$1,263.00, after expenses, as shown on Applicant's sworn personal financial statement of July 10, 1998.

As of the hearing date, February 18, 1998, Applicant's finances were such that he now has about \$1,000.00 per month in available income from his salary. In addition, Applicant now has a computer business on the side and can "make anywhere from \$1,000.00 to \$1,500.00 a month, but not every month" (Tr at 63 - 64). In addition, he has about \$10,000.00 in his 401(k) plan (Tr at 64). He has three credit cards and owes a total of about \$1,500.00 (Tr at 65).

I also make the following findings of fact:

In his Questionnaire for National Security Positions (QNSP), dated May 5, 1998, Applicant answered "Yes" to Questions 27 (b), (c), and (d), which asked about garnishments or repossessions; liens, and judgments, respectively, within the previous seven years. He did not specify what debts he referring to.

Applicant answered "Yes" to Questions 28 (a) and (b), which asked about financial delinquencies. He reported \$8,888.00 in child support obligations. This pertains to SOR 1.i.

Applicant also answered "Yes" to Question 29, which asked about public civil court actions. He reported actions in two state courts on the east coast. He explained that one matter involved a rental car that he was accused of denting and the other involved a car he purchased from a private individual with a down payment but refused to pay the remainder because the car was defective. These pertain to SOR 1.e. and 1.g.

POLICIES

The adjudication process established by DoD Directive 5220.6 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, as amended by Change 3, sets forth specific adjudicative guidelines that must be carefully considered according to the pertinent criterion in making the overall common sense determination required. In addition, each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (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 pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. I have given all of these factors the weight to which I concluded they were entitled. None of them, separately or collectively,

warranted a finding favorable to Applicant.

Because each security case presents its own facts and circumstances, it should not be assumed that the factors cited above 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 (CRITERION C)

The preface to this criteria states that: "An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." In addition, if the manner in which such excessive debts are incurred and/or resolved shows financial irresponsibility, the Applicant's conduct can demonstrate questionable judgment, irresponsibility, and untrustworthiness that is unacceptable in someone seeking access to classified information.

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:

Mitigating Condition (MC) (6) is applicable but only as to SOR 1.a. - Applicant has provided a letter from the creditor's attorney stating that the debt had been satisfied in January 1993.

MC (1) - (5) do not apply because the debts are (1) recent; (2) not an isolated incident but a pattern over a period of years; (3) there is no evidence that the debts were the result of factors largely beyond his control; (4) there is no evidence of financial counseling; and (5) affluence is not a factor).

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest." In reaching the fair and impartial overall common sense determination required by the Directive, the Administrative Judge is not permitted to speculate, but can only draw those inferences and conclusions that 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.

In the defense industry, the security of classified information is entrusted to civilian workers who must be counted on to

safeguard classified information and material twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for a security clearance may be involved in conduct that demonstrates poor judgment, untrustworthiness, or unreliability on the part of an applicant for security clearance. These concerns include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by an Applicant's admissions or by other evidence) and establishes conduct that creates security concerns 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 conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the applicant.

A person who seeks access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. When 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 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." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the Applicant.

CONCLUSIONS

Applicant's answer to the SOR contains "I agree" responses to SOR 1.a., and 1.e. - 1.j. and "I deny" responses to SOR 1.b., 1.c., and 1.d. The affirmative responses relieve the Government of having to produce independent evidence as to those allegations. I find, however, adequate evidence in the record supporting all 10 allegations in the SOR. I also find a nexus or connection between Applicant's financial problems and his suitability for access to classified information. A person who demonstrates a history of financial mismanagement cannot be relied upon to properly manage classified information.

The remaining issue to be resolved is whether Applicant has adequately established mitigation

and/or extenuation. I conclude that he has not done so. Applicant's delinquent debts began in at least 1992 and continue up to the present. Other than the debt involved in SOR 1.b. (which AX E, a letter dated February 19, 1999, indicates was paid off in 1993), there is no evidence that Applicant made any substantial effort to resolve any of the cited debts until the commencement of the process that resulted in the recent hearing.

In addition, I find a troubling pattern of questionable explanations as to how the debts were incurred and Applicant's reasons for not resolving them promptly, particularly since he has been

consistently employed as a computer specialist since at least 1991 (GX 1 at Item 11) and as of the summer of 1998 had available income in excess of \$1,000 per month (GX 2).

As to SOR 1.a., Applicant claims he believed the car was paid off and that he was unaware of the judgment entered against him in January 1992.

As to SOR 1.b., 1.c., Applicant claims he was not aware of the debt until informed by DSS in July 1998.

As to 1.c., Applicant's conduct has resulted in tax liabilities being imposed by two states for the same year, 1989. Applicant's explanation sounds reasonable in the abstract, but his failure to pursue what would be a possible remedy until recently, and with nothing to show for his efforts (AX B), does not demonstrate good judgment. He has not provided any evidence supporting his claim.

As to SOR 1.d., Applicant claimed he believed the debt had been paid at the time he left the area. The debt was turned over for collection in August 1994. Applicant's security clearance application (GX 1) shows that he was employed by the same company and lived in the same area near his employer from 1991 to 1997, making it impossible to believe that the creditor would not be able to contact Applicant.

As to SOR 1.e., Applicant says the debt was based on a false claim that he had dented a rental car.

As to SOR 1.f., Applicant admits responsibility for paying the phone bill but hasn't really tried to contact the debtor.

As to SOR 1.g., Applicant simply disagreed with the judgment against him and simply refused to pay it.

As to SOR 1.h., Applicant claims the debt was incurred by someone who had stolen his credit card. Applicant claims the creditor made no effort to collect the debt from Applicant. The creditor did place the debt onto applicant's credit record as a "bad debt" that was "Charged off Acct" (GX 3). The debt covers the period from July 1993 to June 1996. As was the case with 1.d., above, Applicant worked for the same employer in the same area during the entire period cited.

As to SOR 1.i., the evidence indicates that Applicant stopped paying child support through the state, as ordered by the court, and began paying the mother of his children directly. Applicant's explanation for this change in practice does not encourage confidence in Applicant's judgment and, in any case, resulted in his being confronted with a \$15,055.60 bill from the state for past due child supports (AX C). Despite his proof of making payments to the mother of his children (Ax D), it was not adequate to meet his legal responsibilities and has caused him even more financial problems.

As to SOR 1.j., the evidence establishes that Applicant has had and still has adequate income to make substantial payments toward resolving all of his debts, but that he is still making excuses.

In reciting the above evidence, a pattern emerges of Applicant seeking to avoid responsibility for many of his debts, i.e., not valid, not his, or didn't know about them, and that he has acted out of principle in not paying some of the challenged debts. From the pattern of delinquent debts, failure to honor three judgements against him, and allowing other debts to be written off or go to collection, it is not clear whether Applicant acted out of negligence, procrastination, or some other reason or combination of reasons.

In the end, it makes little difference. Granting Applicant's sincerity and recent efforts to resolve some of the debts, too little has yet been done to overcome the serious and negative impact of seven years of financial mismanagement, misconduct, and failure to act. More time and substantial movement toward resolution of all of the debts are required before the Government can have the required level of confidence Applicant's judgment, reliability, and trustworthiness. [\(2\)](#)

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

CRITERION F (Financial Considerations) Against the Applicant

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. For 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

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.

BARRY M. SAX

ADMINISTRATIVE JUDGE

1. Applicant's post-hearing exhibit F includes a request for "a few more days" in order to obtain the company's records. I have been unsuccessful in reaching Applicant, and in any case, 13 days have passed since Applicant's request without any documents being submitted.
2. Applicant's exhibit (AX) A shows a payment in full of a debt to a creditor cited in the credit history (GX 3) and discussed in Applicant's sworn statement to DSS (GX 2). Because this debt is not cited in the SOR, this exhibit is not relevant or material to a specific allegation, but I have considered it as a factor in evaluating Applicant's overall effort to resolve his debts.