

KEYWORD: Financial

DIGEST: Applicant is a high regarded member of a defense contractor who has a history of delinquent debts, which he accumulated during a lengthy military deployment between 1996 and 1997. Applicant has received counseling and initiated substantial successful efforts before the issuance of the SOR to restore his credit. Of the two debts listed as delinquent in the SOR, one is disputed and the other is barred by the relevant statute of limitations. Both debts have since been removed from Applicant's latest credit report, which contains no listed delinquent debts. Based on Applicant's financial counseling, repayment efforts he has demonstrated to date, and engendered whole person trust, he mitigates security concerns associated with his past history of delinquent debts. Clearance is granted.

CASENO: 06-26388.h1

DATE: 07/19/2007

DATE: July 19, 2007

In re:)	
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SSN: -----)	ISCR Case No. 06-26388
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
ROGER C. WESLEY**

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Department Counsel

FOR APPLICANT

Eric Adams, Esq.

SYNOPSIS

Applicant is a high regarded member of a defense contractor who has a history of delinquent debts, which he accumulated during a lengthy military deployment between 1996 and 1997. Applicant has received counseling and initiated substantial successful efforts before the issuance of the SOR to restore his credit. Of the two debts listed as delinquent in the SOR, one is disputed and the other is barred by the relevant statute of limitations. Both debts have since been removed from Applicant's latest credit report, which contains no listed delinquent debts. Based on Applicant's financial counseling, repayment efforts he has demonstrated to date, and engendered whole person trust, he mitigates security concerns associated with his past history of delinquent debts. Clearance is granted.

STATEMENT OF THE CASE

On February 9, 2007, 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, 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 granted, continued, denied or revoked.

Applicant responded to the SOR on February 26, 2007, and requested a hearing. The case was assigned to me on March 28, 2007, and was scheduled for hearing on June 5, 2007. A hearing was convened on June 5, 2007, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of no witnesses and two exhibits; Applicant relied on one witness (himself) and five exhibits. The transcript (R.T.) was received on June 14, 2007.

STATEMENT OF FACTS

_____Applicant is a 42-year-old program integrator for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

While on military deployment during the 1996-1997 time frame, Applicant accrued debts with two of his creditors that he was not able to take care of. Before leaving for deployment, he gave his mother \$10,000.00 to cover her expenses in his absence. His mother had lost her job, and his stepfather's company was preparing to go on strike (R.T., at 20-21). During his deployment he was overpaid on his housing allowance and had no backup sources to cover the overpayments in lieu of pay deductions. So, in the interim while he was awaiting his return to full payment status he got behind with several of his creditors (R.T., at 22-23). When he returned from deployment in 1999, he found several accounts in delinquent status (including his bank debt with the predecessor of L) (R.T., at 24).

In hopes of consolidating his debts, Applicant applied for an AE account in 1998. But before he could obtain an answer from AE, he was redeployed (R.T., at 24-25). When he returned from deployment in early 1999 he learned that AE had approved his account request and transferred the

balances from his other accounts into this new account, creating a consolidated account (R.T., at 25-26). Since 1998, Applicant has not created any new delinquent debts (R.T., at 26).

Applicant retired from active duty in September 2004 (ex. 1; R.T., at 27). Just before his official retirement, he went to work for his current employer (*i.e.*, in August 2004). Shortly after he joined his current employer's staff, he initiated efforts to restore his credit. He considered bankruptcy but eventually accepted his attorney's advice and signed up for consumer counseling and debt consolidation with Consumer Credit Counseling Service (CCCS) (R.T., at 30-31). After paying over \$6,000.00 to \$8,000.00 a year to CCCS over the course of three years (1999 to 20002) to pay off his debts, he experienced problems with the counseling service and switched firms (R.T., at 32-33).

Through the efforts of the new consolidation firm he engaged (a law firm), Applicant was able to pay off his bank debt for about \$3,900.00 in 2003 (R.T., at 52-54, 64-65). Before he paid this debt, though, the bank assigned its debt to a collection agency, who later it sold the debt to L (R.T., at 56-57). Applicant's efforts to obtain his payment documentation from the law firm (which has since gone out of business) have been unsuccessful. This law firm apparently filed a bankruptcy petition in Applicant's behalf without notifying him. Applicant was able to enlist the trustee's assistance in withdrawing this unauthorized petition.

Upon seeing the L account appear in his December 2005 credit report (ex. 2), Applicant disputed the debt with the credit reporting agencies. Acting on Applicant's dispute of the L debt, the credit reporting agencies have since removed the L debt (in approximately 2006) from their records (*see* ex. A; R.T., at 36-38, 58, 67-69).

Applicant makes no claim of satisfying the listed AE debt. But he did make payments to CCCS for satisfying his known creditors, including AE (*see* ex. C; R.T., at 59-60), and is able document settling one of his AE accounts (*see* ex. E). Neither CCCS nor the law firm he subsequently engage, however, apparently paid this AE debt (R.T., at 60-61). Since over seven years have elapsed since the AE debt became delinquent, he claims application of the governing statute of limitation (R.T., at 62), while still expressing an intent to eventually pay off this debt.

Because Applicant's listed AE debt is barred by the governing statute of limitations, he is reluctant to reaffirm this AE debt anew and enter into repayment arrangements. To do so could trigger the beginning of a new statute of limitations period (R.T., at 40-41). So, rather than begin paying on the AE account, he is accumulating funds with which he hopes to use in making a lump-sum settlement offer to AE. He hopes to generate something between \$10,000.00 and \$15,000.00 from his earnings and retirement, and then contact an attorney about reaching a settlement with AE (R.T., at 41-45, 71-72). In the meantime, the AE debt is no longer reported on his latest credit reports (*see* ex. A). Although, the AE debt was not deleted from Applicant's credit report until sometime in 2006, Applicant is uncertain whether the removal of the AE account had anything to do with the running of any applicable statutes of limitation in his state.

Aside from the two debts covered in the SOR (*i.e.*, the AE and L debts), Applicant is current with all of his accounts listed in his credit report. Since restoring his credit, he has been able to buy a house and reports a very good credit score of 727 (*see* ex. A; R.T., at 39-40). He reports an annual income of around \$76,000.00 and a military retirement of \$25,000.00 (R.T., at 48). He currently has

about \$6,000.00 in savings (put aside to pay his AE debt), a 401(k) retirement account valued at \$23,000.00, and no other stocks and investments (R.T., at 49-51, 73-76). In addition to paying on a mortgage he recently secured on his home (R.T., at 76-77), he continues to help his mother with her expenses: He sends her between \$300.00 and \$500.00 a month (R.T., at 28-29).

Applicant has excellent character references and credit references. He is current with all of his remaining creditors. His supervisor credits him with excellent performance evaluations and work ethics (*see ex. B*). Applicant's former military associates also characterize him as reliable and trustworthy (*ex. B*).

POLICIES

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

The concern. Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant is a program integrator with two delinquent debts he accumulated some years ago: one during a military deployment between 1996 and 1997, and another associated with a post-deployment effort to consolidate his debts. One of the debts (associated with L) he paid, and then disputed the ensuing claim of a creditor assignee. The other debt (the AE debt) is since barred by the applicable statute of limitations. Although Applicant presents an overall positive credit history with a high credit score, the previously reported delinquent debts were significantly substantial to raise Government security concerns.

Security concerns are raised under the financial considerations guideline of the Regulation where the individual applicant is so financially overextended that he or she is at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of delinquent debts and his failure to document payments of the two debts in issue (*i.e.*, his AE and L debts warrant the application of two of the disqualifying conditions (DC) of the revised Adjudicative Guidelines for financial considerations: DC 19(a) (*inability or unwillingness to satisfy debts*) and DC 19(c) (*a history of not meeting financial obligations*).

Both his AE and L debts are extenuated to some extent, and MC 20 (b) (*the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances*) has some applicability given his mother's/stepfather's situation before he deployed in 1996 and his overpayment problems he experienced on deployment.

To his credit, Applicant initiated credit counseling with CCCS following his military discharge and paid off most of his debts through the program before he experienced disagreements with the counseling service and switched firms. Through the efforts of the law firm that handled his debts before going out of business, Applicant addressed one of the two listed debts. This debt was subsequently assigned to a credit collection agency (L), which Applicant disputed. His most recent credit report reflects the removal of both of his listed debts and current status of all of his remaining listed debts. Based on his counseling and repayment efforts to date, he may take advantage of two of the mitigating conditions (MC) of the financial considerations guideline: MC 20 (c) (*the person*

has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control) and MC 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies.

MC 20 (e) (*the individual has reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue*) also has application to the facts of this case. True, Applicant does not dispute the bank debt as one of his creation: He disputes L's ownership of the debt that he assures he satisfied before the debt was resold to L. While the Appeal Board has never defined the meaning of the term "legitimacy" in MC 20(e), the term can reasonably be construed to include not just disputes over the origins of the debt, but subsequent assignments as well, and possibly even enforcement issues (such as statutes of limitations).

At the very least, MC 20(e) is capable of embracing debt ownership questions (such as L's disputed assignment). Reasonable grounds for Applicant's disputing the L debt is documented by the debt's removal from Applicant's most recent credit report

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in financial cases (as here) and bring into play security concerns covered by the financial consideration guideline. Here, Applicant satisfies that one of his debts was disputed (the L debt), and the other is barred by his State's relevant statute of limitations.

While statutes of limitation in general are considered important policy tools for discouraging plaintiffs from pursuing stale claims and promoting finality in litigation, they have never been equated with good-faith efforts to repay overdue creditors. *See, e.g.,* ISCR Case No. 02-30304, at 3 (App. Bd. April 2004)(quoting ISCR Case No. 99-9020, at 5-6 (App. Bd. June 2001). And so, reliance on his State's statute of limitations bar to excuse payment of his AE debt is not by itself dispositive of security concerns. However, the AE debt appears to be the only remaining debt on Applicant's credit report that represents an acknowledged undischarged debt. The debt, as such, is isolated and one that is not likely to recur. Applicant may invoke MC 20(a) (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*) under the circumstances of his case.

Taking into account all of the facts and circumstances surrounding Applicant's debt accumulations, his efforts to seek counseling and restore his credit, and his overall demonstration of solid performance evaluations and demonstrated trustworthiness, Applicant mitigates security concerns related to his past debt delinquencies and judgment lapses associated therein. Favorable conclusions warrant with respect to the allegations covered by Guideline F.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the E2.2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE F (FINANCIAL):	FOR APPLICANT
Sub-para. 1.a:	FOR APPLICANT
Sub-para. 1.b:	FOR APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge