

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has two listed delinquent debts on his prior credit report, one of which he disputed and ultimately paid, and the other of which he initially denied any debt responsibility before ultimately discharging through a settlement arrangement with the creditor. By his demonstrated good-faith disputes and discharge of his debts, extenuating circumstances associated with his debts during a period of income loss from his wife and increased college expenses, Applicant mitigates security concerns associated with his delinquent debts. He successfully refutes allegations of falsification of his security clearance application. Clearance is granted.

CASENO: 06-26508.h1

DATE: 08/06/2007

DATE: August 6, 2007

In re:	)	
	)	
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SSN: -----	)	ISCR Case No. 06-26508
	)	
Applicant for Security Clearance	)	

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

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Edmunds, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has two listed delinquent debts on his prior credit report, one of which he disputed and ultimately paid, and the other of which he initially denied any debt responsibility before ultimately discharging through a settlement arrangement with the creditor. By his demonstrated good-faith disputes and discharge of his debts, extenuating circumstances associated with his debts during a period of income loss from his wife and increased college expenses, Applicant mitigates security concerns associated with his delinquent debts. He successfully refutes allegations of falsification of his security clearance application. Clearance is granted.

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### **STATEMENT OF THE CASE**

On May 14, 2007, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant. The SOR 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, and recommended referral to an administrative judge for determination whether clearance should be granted or continued.

Applicant responded to the SOR on May 31, 2007, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on June 19, 2007. Applicant submitted information in response to the FORM within the 30 days afforded him to provide supplemental documentation regarding the issues. Included in the packet of information provided by Applicant were a cover letter of June 29, 2007, correspondence to and from his creditors, an updated credit report, and documented settlement arrangements with two of his creditors. The case was assigned to me July 16, 2007.

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### **SUMMARY OF PLEADINGS**

Under Guideline F, Applicant is alleged to have accumulated two delinquent debts: one with AF in the amount of \$5,538.00, and the other with BA in the amount of \$14,639.00. Under Guideline E, Applicant is alleged to have (a) falsified his security clearance application (SF-86) of April 5, 2006 by answering no to having debts over 180 and 90 days delinquent, respectively.

For his answer to the SOR, Applicant admitted his debts but denied the BA debt. He also denied falsifying his SF-86. Applicant claimed to have paid the AF debt that he had continuously disputed over a claimed significant mark-up of the debt over the purchase price of the item. Applicant disputed the BA debt, too (denying any knowledge of the debt), but documented a settlement of the debt (with a \$5,000.00 up-front payment and agreed monthly payments on the \$5,000.00 plus balance) after claimed frustrated efforts to identify the debt as his own. Applicant claimed no knowledge of any delinquent debts when he executed his SF-86 (disputing his AF debt and unaware of any debts owed to BA). Applicant attached copies of his payment agreements to his answer.

## FINDINGS OF FACT

\_\_\_\_\_ Applicant is a 51-year-old quality engineer for a defense contractor who seeks continuation of his 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.

Applicant incurred a debt with RS (AF's assignee retailer) in October 2004. His May 2006 credit report lists a past due balance of \$5,270.00 on a closed account with AF. The same credit report lists a \$14,639.00 past due balance on a BA account.

Applicant disputed both of his listed delinquent accounts. He claimed his AF debt was overstated by over 100 per cent. Applicant purchased a retail item from RS in October 2003 for \$2,380.00. AF reported an account balance of \$5,270.00, which continued to accrue interest. Applicant has consistently disputed the amount of the debt and paid nothing on the account while he continued to dispute the amount.

AF sued Applicant for the entire debt claimed in 2006. Applicant responded to AF's petition in July 2006 and reiterated his claim that the underlying debt sued upon was overstated. He documents settling with the creditor assignee in May 2007 for the reduced amount of \$2,770.00 in full satisfaction of AF's claim against him.

Concerning his listed BA debt, Applicant denied any familiarity with the account and asked both the creditor and the credit reporting agencies to remove the debt from his credit reports (*see* item 3). Frustrated over his inability to enlist any response from either the creditor or the reporting agencies, Applicant undertook accelerated steps to resolve the BA debt. By virtue of a document repayment agreement of May 2007, Applicant settled the BA debt for the reduced amount of \$10,247.00 through a successor creditor or assignee: FB. Without acknowledging responsibility for the debt with either creditor, Applicant agreed to an up-front payment of \$5,000.00 and monthly payments of \$201.80 until the balance was discharged. Applicant documents payment of the initial \$5,000.00 to FB and agreement to pay the remaining balance.

To be sure, Applicant did fall behind with some of his valid accounts for a short period following his wife's developing rheumatoid arthritis and suspension of work in 2003 to deal with her painful condition. Complications from the prescribed medication caused her severe stomach problems and ensuing hospitalization. Because Applicant had relied on his wife's income to fund his children's college expenses, her work loss placed a strain on Applicant's available financial resources. Now that his wife has recovered and returned to work and both of his children have completed their college studies and are supporting themselves, college-related expenses are no longer a concern of Applicant's.

Asked to complete an SF-86 in April 2006, Applicant answered "no" to questions 28(a) and (b), which inquired about any debts more than 180 and 90 days delinquent, respectively. He attributed his negative responses to his unawareness at the time that he had any acknowledged delinquent debts. While he knew he owed money to AF's predecessor for the item he purchased in 2004, he did not consider the debt delinquent at the time because he was disputing the amount of the debt. Whether or not the RS creditor would have accepted the lesser amount acknowledged by

Applicant is unclear. Applicant's recent settlement with AF (RS's creditor assignee) covers a settlement amount close to his claimed correct purchase figure and reflects a good faith dispute between Applicant and the creditor. Under the circumstances, his claimed understanding that his dispute with the creditor precluded the debt's being considered a delinquent debt is sufficiently plausible to warrant acceptance. His omission of this debt, accordingly, was not the result of a knowing, wilful omission.

Less than clear is Applicant's claimed unawareness of the BA debt he denied any knowledge of and only recently settled out of claimed frustration with his lack of feed back from his inquiries. It is conceivable that the debt originated with FB, whose debt he settled in May 2007. But this is not clear either. For FB could just as reasonably be an assignee of BA. Given the current status of most of his accounts in his May 2006 credit report, his earnestness in resolving his debts, and the plausibility of his being confused over the BA debt considering all of the circumstances extant in the record, Applicant's explanations are entitled to acceptance. His omission of this debt from his SF-86 was not the result of any deliberate falsification, but rather because of his lack of knowledge or recollection of having such an outstanding debt with BA.

## **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.

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### **Personal Conduct**

*The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

### **Burden of Proof**

By virtue of the precepts framed by the revised Adjudicative Guidelines, 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 quality engineer for a defense contractor who accumulated two significant debts that he initially questioned and has since resolved. Because he omitted these two debts (that were reported in his credit report as charged off or in collection), security concerns were raised as well over his debt omissions.

#### **Financial issues**

Security concerns are raised under the financial considerations guideline of the revised Adjudicative Guidelines where the individual appellant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which can

raise questions about an the individual's reliability, trustworthiness and ability to protect classified information, and place the person at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of delinquent debts and his failure to document payments on any of his listed debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines for financial considerations: DC 19(a) (*inability or unwillingness to satisfy debts*) and DC 19(c) (*a history of not meeting financial obligations*).

Applicant's debts are attributable in part to both his continuing disputes over the justification of these listed debts and general revenue shortfalls during an extended period spanning 2003 and 2006 when his wife experienced medical-related work loss and his children were in college.

Since seeing his credit report and the SOR, Applicant has accelerated his efforts to resolve these two listed delinquent debts and is able to document his paying one of the creditors (AF) and executing a settlement agreement with the other creditor (BA). Given both his strained financial circumstances during the 2003-2006 period and his documented responsible efforts to resolve his two outstanding debts (*viz.*, AF and BA), Applicant may rely on 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)*) of the Guidelines for financial considerations.

Mitigation credit is also available to Applicant based on his presented proofs. Applicant is able to demonstrate credible disputes with his two listed creditors, with whom he ultimately reached amicable payment arrangements. Age of the debts at issue is covered by two of the mitigating conditions for financial considerations: MC 20(a) (*the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*) has applicability, while not dispositive. MC 20(e) (*the individual has a 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*) has applicability as well.

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).

Taking into account all of the facts and circumstances surrounding Applicant's debt accumulations and documented steps taken to resolve them, Applicant mitigates security concerns related to his debt delinquencies. Favorable conclusions warrant with respect to the allegations covered by sub-paragraphs 1.a and 1.b of the SOR.

### **Personal Conduct issues associated with Applicant's clearance application**

Security concerns over Applicant's judgment, reliability and trustworthiness are raised under the personal conduct guideline, too, as the result of his omissions of his two listed debts in the SF-86 application he completed in April 2006. By omitting debts attributable to him over 180 and 90 days delinquent, respectively, Applicant failed to furnish materially important background information about his debts that was needed for the Government to properly process and evaluate his security clearance application.

Applicant's SF-86 omissions are attributable to his good-faith disputes over whether either debts was justified in amount and/or creditor identification. Applicant's impressions at the time, while potentially mistaken, were made in good faith, without any indicated intent to mislead. Applicant's explanations, considering both the circumstances surrounding the furnished information at the time and Applicant's overall payment history, enable him to convincingly refute the falsification allegations. Considering all of the evidence produced in this record, favorable conclusions warrant with respect to the personal conduct guideline allegations set forth in sub-paragraphs 2.a and 2.b of the SOR that Applicant knowingly and wilfully omitted debts more than 180 and 90 days delinquent, respectively, when completing his security clearance application.

In reaching my decision, I have considered the evidence as a whole, including each of the E 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 CONSIDERATIONS):	FOR APPLICANT
Sub-para. 1.a:	FOR APPLICANT
Sub-para. 1.b:	FOR APPLICANT
GUIDELINE E: (PERSONAL CONDUCT):	FOR APPLICANT
Sub-para. 2.a:	FOR APPLICANT
Sub-para. 2.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

