

KEYWORD: Financial

DIGEST: Applicant has a number of listed delinquent debts, most of which are related to medical cost-shares associated with surgical procedures he underwent between 1999 and 2003. Only one of his listed debts does he dispute, and he documents resolving this debt favorably. With respect to the remaining listed debts, Applicant has since paid them. By his demonstrated good-faith efforts in resolving his lone disputed debts and paying the remaining extenuated ones, Applicant mitigates security concerns associated with his delinquent debts. Clearance is granted.

CASENO: 06-23607.h1

DATE: 09/26/2007

DATE: September 26, 2007

In re:

SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 06-23607
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**DECISION OF ADMINISTRATIVE JUDGE
ROGER C. WESLEY**

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Department Counsel

FOR APPLICANT

Chester (Skip) Morgan, II, Esq.

SYNOPSIS

Applicant has a number of listed delinquent debts, most of which are related to medical cost-shares associated with surgical procedures he underwent between 1999 and 2003. Only one of his listed debts does he dispute, and he documents resolving this debt favorably. With respect to the remaining listed debts, Applicant has since paid them. By his demonstrated good-faith efforts in resolving his lone disputed debts and paying the remaining extenuated ones, Applicant mitigates security concerns associated with his delinquent debts. Clearance is granted.

STATEMENT OF THE CASE

On May 23, 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 June 19, 2007, and requested a hearing. The case was assigned to me on August 14, 2007, and was scheduled for hearing on September 11, 2007. A hearing was held on September 11, 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 four exhibits; Applicant relied on two witnesses (including himself) and five exhibits. The transcript (R.T.) was received on September 19, 2007.

PROCEDURAL ISSUES

_____ Before the close of the hearing, Applicant requested the record be kept open to afford him the opportunity to supplement the record with documented payments of two of the creditors listed in the SOR. For good cause demonstrated, Applicant was granted seven days to supplement the record. Within the time permitted, Applicant provided documentation of his payments to his medical creditors and his credit card creditors. The submissions were admitted without objection and assigned exhibit numbers F, G and H..

SUMMARY OF PLEADINGS

_____ Under Guideline F, Applicant is alleged to have accumulated 12 delinquent debts exceeding \$10,000.00. For his answer to the SOR, Applicant admitted all but three of the alleged debts and furnished explanations of the medical problems he encountered that caused him to fall behind with his debts.

FINDINGS OF FACT

_____Applicant is a 57-year-old system engineer who seeks to retain his security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Before 1999, Applicant enjoyed stable employment and debts in current status. In 1999, he ruptured three discs and encountered difficulty walking without extreme pain. He underwent surgery that year. Her treating surgeon removed one of the problem discs later that year. However, this disc turned out not to be the one that was pushing on his sciatic nerve. His recovery time from the surgery was six months, during which time, he could not return to work (R.T., at 21-22).

Because the surgeon removed the wrong disc when he operated on Applicant in 1999, Applicant's back pain persisted throughout 1999. His physician advised him that the two remaining discs were still pushing against the sciatic nerve, and his lower spine was pressing hard against his spinal cord and needed to be corrected. So, in 1999 the physician scheduled Applicant for a second surgical procedure. During this operation, the physician nicked the membrane that holds the spinal fluid and caused leakage of his spinal fluid for several days, and eventually a cerebral hemorrhage (R.T., at 57-58). As a result, the physician had to schedule Applicant for a third surgical procedure: to close and secure the hole that caused the leaking. Applicant's recovery period for these additional surgical procedures was almost a year, during which time he was out of work, and received only a portion of his regular pay (R.T., at 58-59). This surgical procedure cost over \$100,000.00, of which his insurance company picked up only 80 per cent of the total cost (R.T., at 58).

To help him with his medical bills during a period of diminished income from his work, Applicant resorted to using his credit cards to. Later in 1999, he did receive medical clearance to return to work on a part time basis, and did so for a short time. When his company complained that it could not use his services on a part time basis, Applicant enlisted his treating physician to authorize his return to full time employment (R.T., at 59). No sooner did he report to his work site on a full time basis than his company laid him off.

Physically limited, Applicant could not find work in 2000 and turned first to his unemployment insurance. After exhausting his eight remaining weeks of unemployment entitlement, Applicant applied for welfare benefits. Once turned down, he proceeded to exhaust his 401(k) plan before reapplying for welfare benefits.

During his period of extended recovery and diminished earnings, Applicant was able to keep up with most of his current debts, but was unable to cover his medical bills and credit cards. Shortly after accepting another job in the local area in 2002, he encountered a head-on automobile accident that broke his back, caused a concussion, and totaled his own automobile. This accident caused him to be out of work for almost a year and cease paying on his accumulated medical bills. Applicant's medical bills associated with his 2003 back surgery cost over \$200,000.00, of which his insurance company covered all but 20 per cent, or \$20,000.00 (R.T., at 58). While Applicant did receive \$100,000.00 in settlement from the offending motorist's insurance company, he netted only about \$20,000.00 from this settlement after expenses and attorneys fees were deducted (R.T., at 61).

Because of the numerous side effects associated with his 2003 back operation, Applicant experienced difficulties at work, and was forced to take considerable leave. After exhausting his sick leave, the time he took off from work was uncompensated. This loss of income put additional stress

on his debt paying ability. Altogether, Applicant accumulated some 12 delinquent debts between 1999 and 2005 that until recently he has not been able to regularly address.

Since returning to work in 2006, Applicant has made steady progress in addressing his delinquent debts. He has been aided some in his repayment efforts by a small inheritance his wife received from her mother's estate following her mother's passing in May 2007 (*compare* ex. 2 with ex. A; R.T., at 23). A long disputed debt was reported in Applicant's May 2007 credit report (ex. 2) and is listed in the SOR as creditor 1.a. This debt has since been resolved favorably to Applicant and now reflects a zero balance (see ex. A; R.T., at 25-27).

Of all the listed debts in the SOR, Applicant disputed the validity of just one of the debts: creditor 1.a. He is able to document favorable resolution of this debt (*see* ex. A; R.T., at 25-26). To address the listed medical debts in the SOR (which he acknowledges as his own), Applicant engaged two consolidation services: BC and CSC. Through these services, Applicant and his wife are able to document payment in full of each of the listed medical debts (*i.e.*, creditors 1.c through 1.i) through two lump sum payments (*see* exs. B, C, E and H; R.T., at 28-35). The two credit card accounts Applicant had with creditors 1.j and 1.k were paid as well. Payment of the first credit card account is documented by exhibits D, E and F (R.T., at 35-43). Payment of the second account (creditor 1.l) was previously made in July 2006 and is documented by exhibit G (running check register).

By supplemental submissions, Applicant is able to document his satisfaction of his other credit card debt (creditor 1.k) with a compromise payment of \$1,680.54 and her \$422.00 collection account with creditor 1.l (*see* ex. F). He documents payment, too, of his two AH debts covered by creditors 1.b and 1.d, which in the aggregate total \$3,262.00 (*see* exs. B, C, Gand H; R.T., at 26-27)). And he clarifies the ambiguity reflected in exhibit C with his corrected payment documentation that reflects a zero balance following his documented \$1,170.06 payment in August 2007 (*compare* exs. C with H).

With his documented payments, Applicant has resolved all of her delinquent debts listed in the SOR and is currently debt free. He and his wife have no credit cards in delinquent status that they are aware of. He currently has \$1,610.00 reinvested in his 401(k) account that he can draw on should a financial emergency arise in the future.

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 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 system engineer for a defense contractor who accumulated a number of delinquent debts over a six-year period spanning 1999 and 2005 during periods of unemployment

attributable to medical issues. Considered together, and without resolution, Applicant's accumulated debts raise security significant concerns.

Security concerns are raised under the financial considerations guideline of the revised Adjudicative Guidelines where the individual applicant 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 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 prior inability to address these 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*).

For the most part, Applicant's debts are attributable to (a) the substantial medical outlays he became obligated to disperse to his medical providers to satisfy the cost-share portions of his insurance policy and (b) his use of his credit cards to cover his family's personal needs during extended periods of time when he was recovering from his recurrent back surgeries and could not return to work.

Since returning to work on a full time basis in 2006, Applicant and his wife have made considerable progress in addressing his delinquent debts. Aided by his wife's small inheritance, he has been able to favorably resolve his one disputed debt and repay all of his other listed creditors (most of them of a medical nature) through two debt consolidated services he engaged. Given his exhibited extenuating circumstances associated with his debilitating back ailments, and the corresponding medical procedures to correct the identified problems, and the diminished resources he and his wife had at their disposal to address their debts during related periods of unemployment, 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 repayment proofs. Applicant is able to demonstrate a credible dispute with one of his listed creditors (*i.e.*, creditor 1.a), which has since been resolved, and completed repayments with his remaining creditors. Age of the debts at issue is covered by one 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. With respect to Applicant's lone disputed debt, 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.

While Applicant is not able to document any specific credit counseling, his election to involve two debt consolidation services to resolve his numerous medical debts reflects positively on his willingness to explore creative ways to utilize his available resources to resolve his outstanding debts. Based on his initiated efforts to date, prospects for his gaining important insights

in handling his finances in the future should he be confronted with other medical issues appear to be promising.

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 both his disputed debt and his proven debt delinquencies. Favorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.l of the SOR.

In reaching my decision, I have considered the evidence as a whole, including each of the E2.2 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
Sub-para. 1.c:	FOR APPLICANT
Sub-para. 1.d:	FOR APPLICANT
Sub-para. 1.e:	FOR APPLICANT
Sub-para. 1.g:	FOR APPLICANT
Sub-para. 1.h:	FOR APPLICANT
Sub-para. 1.i:	FOR APPLICANT
Sub-para. 1.j:	FOR APPLICANT
Sub-para. 1.k:	FOR APPLICANT
Sub-para. 1.l:	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