

DATE: September 17, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-09520

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Juan Rivera, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of delinquent consumer debts, totaling in excess of \$40,000.00, which he and his ex-spouse accumulated over a number of years. These debts are attributable to a combination of income loss and poor use of available resources. Attempts to resolve his joint and several debts have been few and with little success. Applicant still owes all of the debts covered in the SOR and has no immediate plan to address them. As such, Applicant fails to mitigate security risks associated with his unresolved debts and failure to address them earlier through the option available to him. Clearance is denied.

STATEMENT OF THE CASE

On March 19, 2003, 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 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 April 3, 2003, and requested a hearing. The case was assigned to me on June 10, 2003. Hearing was scheduled for July 17, 2003 and was convened on July 17, 2003, as scheduled. 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 one witness (himself) and no exhibits. The transcript (R.T.) of the proceedings was received on July 25, 2003.

PROCEDURAL ISSUES

Before the close of the hearing, Applicant asked to keep the record open to permit him to supplement the record with documented filings of his federal tax returns for tax years 1998 through 2000. Department Counsel offering no

objections, and for good cause shown, Applicant was allowed ten days to supplement the record with copies of his filed tax returns. Within the time permitted, Applicant provided copies of his executed returns for tax years 1998 through 2002. Department Counsel expressed no objection to the admission of the exhibit. The exhibit is accepted as Applicant's exhibit A.

STATEMENT OF FACTS

Applicant is a 43-year-old construction manager for a defense contractor who has since been terminated for cause, but who continues to seek a security clearance. Because the hearing had already commenced before confirmation of Applicant's termination was provided, the determination was made to complete the hearing as scheduled.

Summary of Allegations and Responses

Under Guideline F, Applicant is alleged to have a history of financial problems: Specifically, he has delinquent debts totaling in excess of \$40,00.00, in addition to a judgment in the amount of \$1,849.00. Also, under Guideline F, Applicant is alleged to have failed to file his federal income taxes for tax years 1998, 1999 and 2000, in violation of 26 U.S.C. Sec. 7203.

Additionally, Applicant is alleged to have falsified his security clearance application (SF-86) of January 9, 2001, by omitting most of his debt delinquencies over 90 and 180 days, respectively.

For his response to the SOR, Applicant admitted each of the allegations covered by Guideline F. He denied falsifying his SF-86, claiming he disclosed each of the delinquent debts he was familiar with.

Relevant and Material Factual Findings

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 joined the Air Force (AF) in 1981 at the age of 21 and served 13 years of duty (between 1981 and 1994). Soon after enlisting in the AF, he married the woman to whom he has remained married to for over 20 years. He was discharged from the AF in 1994 as an electronics technician, with the rank of E-5.

Applicant's finances

During their marriage, Applicant and his wife became overextended with their finances. Most of the debts Applicant and his wife incurred involved consumer credit accounts. Some of these consumer credit agreements were signed exclusively by Applicant's wife; others were executed by Applicant and his wife jointly. For most of their marriage, Applicant deferred to his wife to take care of their debts. Applicant looked not only to his wife to pay their debts, but to prepare their income tax returns as well.

For much of their marriage, Applicant's wife drank heavily, some of it induced by the loss of her father, some by her mother's becoming ill with terminal cancer. While still in the AF, Applicant requested a new assignment that would enable him to be closer to his wife and her mother. To save their marriage, Applicant began drinking with his wife and frequenting local nightclubs. Applicant and his wife remained in the area following his AF discharge. Throughout their marriage (even with the drinking problems his wife had been experiencing), Applicant continued to rely on his wife to pay their bills.

Applicant and his wife were involved in a head-on collision in 1996, in which Applicant (the driver) was not at fault. His wife suffered knee injuries that required surgery, as well as a strained back. Having difficulty coping with her injuries, Applicant's wife increased her drinking as well as the number of pain killers prescribed to her. Anxious to lift his wife's spirits, Applicant agreed to purchase a house in 1998. The home purchase, coupled with his wife's inability to return to work, compounded Applicant's debt problems. Assured by his wife she would use her settlement money to pay their credit card debts, Applicant continued to defer to her to keeping their finances in order. But instead of utilizing the \$80,000.00 in settlement proceeds awarded her, she and Applicant used the money on improving their home. Of the

settlement proceeds, Applicant could recollect receiving no more than \$400.00 himself. However, based on his DSS statement and hearing testimony, Applicant was quite aware of the state of their debts and their failure to address them.

At Applicant's urging, his wife reportedly made calls to some of their creditors to explore negotiated payments with them. She reported back to him that only one of the creditors would agree, which she promptly paid. So, at least by 2000, Applicant was made aware that his wife had not taken care of their amassed credit card debts, for which he was jointly and severally liable. For the duration of their marriage, he continued to defer to his wife to take care of their debts. Applicant is unable to convince that he was under any false impression that his wife paid any of these old credit card debts. By the time he and his wife separated in September 2001, he was inferentially aware that his jointly created debts (which are covered in the SOR) were unpaid. These same debts remained unpaid when Applicant separated from his wife, and remain unpaid as of the close of the record. Applicant cannot avert inferences he was aware these covered debts were unpaid by his wife at all times relevant in these proceedings, his claims of reliance on his wife to pay their bills, notwithstanding. One of these debts is a judgment taken against him in April 2000 for \$1,849.00.

Applicant did consult an attorney in early 2001, once he became convinced his debts were out of control with no forthcoming help from his wife. With this attorney, Applicant explored several options, including bankruptcy. Accepting his attorney's advice to petition for bankruptcy, Applicant authorized the attorney to prepare bankruptcy schedules of assets and debts. However, Applicant was unable to persuade his wife to sign the required schedules, and, as a result, he never completed the bankruptcy petition (*see* R.T., at 38). Eventually, Applicant and his wife lost their home through foreclosure (this in October 2001). Applicant and his wife consulted with a second lawyer in 2001 about seeking bankruptcy relief, but were turned away by the attorney after he looked at some of their assets.

Since separating from his wife, Applicant is once again exploring bankruptcy, and has been working with an attorney over the past year (*see* R.T., at 39-40, 56-57). It is his intention to include all of his unpaid debts covered in the SOR in a bankruptcy petition. However, he does not expect to file for either Chapter 13 or Chapter 7 relief before the end of the year..

Besides failing to take care of his credit card and judgment creditors, Applicant failed to file his federal income tax returns for tax years 1998 through 2000, despite having completed timely extension requests. As with his debts, he attributes his filing failures to relying on his wife to actually file the returns he executed for her (*see* R.T., at 33). By his post-hearing submissions (ex. A), he documents completing and filing his federal returns as follows: December 2001 as for his 1998 and 1999 returns and May 2002 as for his 2000 return (*see* ex. A). Applicant documents completing and filing his 2001 and 2002 federal returns in March 2003. While he does not provide any cover letter or other documentary proof of his actual filing of these returns, both his completed forms and filing/payment assurances provide a sufficient confluence of proof to warrant inferences that he, in fact, filed these returns as claimed.

Applicant's SF-86 omissions

When completing his SF-86 in January 2001, Applicant omitted most of his delinquent debts, including the prior judgment that was taken against him. Of the nine listed debts in the SOR, Applicant omitted all but his debts covered by sub-paragraphs 1.a and 1.b. He attributes his omissions to confusion and the result of his customary reliance on his wife to take care of his debts (*see* R.T., at 46-49, 58). However, he was kept abreast of his debt delinquencies by his wife, who advised him back in 2000 of her inability to work out payment settlements with most of their joint creditors. His concerns about his delinquent debts even prompted him to seek bankruptcy in early 2001, months after he completed his SF-86. Applicant acknowledges, too, being aware of the judgment taken against him by creditor 1.j in April 2000; yet he failed to list this judgment in his SF-86 as well.

If Applicant could simply not identify each of his omitted delinquent creditors by name, he could easily have them generally in the remarks section of his SF-86. This he did not do either. Applicant's explanations of confusion cannot be reconciled with either the plain wording of questions 38 and 39 or the provisions in the SF-86 which afforded him the opportunity to make general notations of delinquent debts he could not identify by name. Inferences of knowing and wilful concealment cannot be averted.

Applicant was interviewed by a DSS agent in October 2001. When shown a copy of his credit report by the interviewing agent, Applicant acknowledged the delinquent debts and judgment covered in the SOR as his own (*see* exs. 2 and 3;

R.T., at 61). Applicant provided no explanations to the interviewing agent as to why he omitted these debts and judgment in his SF-86.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list "binding" policy considerations to be made by Judges in the decision making process covering DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board, requires 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

Concern: An individual who is financially overextended is at risk at having to engage in illegal acts to generate funds. Unexplained influence is often linked to proceeds from financially profitable criminal acts.

Disqualifying Conditions

DC 1. A history of not meeting financial obligations.

DC 3. Inability or unwillingness to satisfy debts.

Mitigating Conditions

MC 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Personal Conduct

Basis: conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Disqualifying Conditions:

DC 2 The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Mitigating conditions: None

Burden of Proof

By reason of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for 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 on the applicant's eligibility to obtain or maintain a security clearance. The required showing of materiality, 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 accessible 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 proof 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 comes to these proceedings with a history of financial difficulties as well as security concerns over his omission of his debts over 180 and 90 days delinquent, respectively, that cloud confidence in his judgment, reliability and trustworthiness required to grant him access to classified information.

Financial history

Applicant accrued considerable consumer-related debts between 1994 and 2000 attributable to his wife's increased drinking associated with her emotional setbacks and later her accident. By 1996, Applicant and his wife had accumulated over \$40,000.00 in delinquent debts that they could longer service. With opportunities to address their debts following his wife's accident settlement in 1998, Applicant and his wife instead used their fresh resources on home improvements on a home they later lost in foreclosure. Having consistently relied on his wife to take care of their joint debts, Applicant was in no position to address these debts himself, once he separated from his spouse in September 2001. While he has explored bankruptcy anew (having elected earlier not to seek bankruptcy relief), so far he has not taken any firm steps towards petitioning for bankruptcy or debt consolidation.

On the strength of the evidence presented, Government may invoke two Disqualifying Conditions (DC) of the Adjudicative Guidelines for financial considerations: DC 1 (history of not meeting financial obligations) and DC 3 (inability or unwillingness to satisfy debts).

While Applicant's aggregated delinquent debts and judgment may be partially attributable to unanticipated cash strains associated with his wife's drinking and emotional set backs, his explanations for failing to follow-up with attempted payment arrangements or bankruptcy relief to address his accumulated debts are not convincing. Once Applicant and his wife missed available opportunities to address their debt delinquencies with their settlement proceeds, and later through joint bankruptcy relief, both were alerted to the troubled state of their finances. After later losing their home to foreclosure and separating, Applicant had ample opportunities again to take individual initiative to address his debts before he received the SOR. So far, however, he has failed to take any affirmative steps to discharge his old debts. With the ample time and current income resources that have been afforded him to finally establish a repayment record or other program for addressing his debt delinquencies (bankruptcy and debt consolidation are two prime examples), he has again declined to take any finite steps towards addressing his debts.

An applicant's exhibited history of ignoring undisputed creditor obligations, even when resources become available for repayment, bears close resemblance to an applicant's being asked to place his or her other private interests in subordination to the Government's security interests when the two clash with each other. Over time, our Appeal Board has shown general consistency in disallowing applicant claims to mitigation based on faulty or non-existent repayment histories. *Cf.* ISCR Case No. 01-17474 (March 7, 2003); ISCR Case No. 01-13653 (March 7, 2003); ISCR Case No. 01-12147 (January 21, 2003). Security clearance decisions are, of course, never an exact science, but rather involve predictive judgments about a person's security eligibility based on the person's past conduct and present circumstances. *See Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). With so limited payment seasoning to rely on to advance his mitigation claims regarding his consumer debts and judgment liability, he lacks the probative mitigation necessary to absolve him of the pressure and judgment risks associated with being in debt.

Applicant is able to document his preparation of his delinquent tax returns for tax years 1998 through 2000 and

inferentially convinces that he filed them as well in a seasonable way after preparing them in December 2001 and May 2002. While his filing delays are linked to his tax delinquencies, they are mitigated by passage of time and payment of the underlying tax debts associated with them. Under these circumstances, his late filing of his returns are sufficient to mitigate security concerns associated with Applicant's judgment lapses in failing to file his returns in a timely way.

So, while Applicant may take limited advantage of MC 6 (initiated good-faith effort to repay overdue creditors) of the Adjudicative Guidelines to mitigate his tax filing failures, he may not invoke either this mitigating condition or MC 3 (conditions largely beyond the person's control) to mitigate his debt delinquencies. Attribution of responsibility to his spouse to cover his delinquent debts over an extended period of their marriage is not such a circumstance that can be reasonably classed as a condition beyond the person's control.

Considering the record as a whole, unfavorable conclusions are warranted with respect to subparagraphs 1.a through 1.j of the Adjudicative Guidelines governing financial considerations. Favorable conclusions do warrant with respect to subparagraph 1.k.

Falsification issues

Potentially serious and difficult to reconcile with the trust and reliability requirements for holding a security clearance are the timing and circumstances of Applicant's SF-86 omissions of his delinquent debts: specifically, debts over 180 days and 90 days delinquent, respectively. So much trust is imposed on persons cleared to see classified information that deviation tolerances for incidents of trust betrayal are calibrated narrowly.

Applicant falsified his SF-86 in several material respects: omitting most of his covered debts over 180 days and 90 days, respectively, as well as a personal judgment taken against him. His claims of confusion and reliance on W1 to take care of his debts are belied by the considerable involvement he later took with these same debts before completing his SF-86 in January 2001. Applicant's explanations of his omissions are insufficient to avert conclusions of knowing and wilful concealment.

While Applicant was up-front with the interviewing DSS agent in acknowledging his delinquent debts when later confronted with his credit report, his acknowledgments were neither prompt nor free of confrontation. Accordingly, mitigation is not available to Applicant under any of the mitigation conditions covered by Guideline E of the Adjudicative Guidelines.

Considering all of the evidence produced in this record and the available guidelines in the Directive (inclusive of the E.2.2 factors), unfavorable conclusions warrant with respect to sub-paras. 2.a and 2.b of Guideline E.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors set forth in the Procedures section (paragraph 6) of the Directive, as well as E.2.2 of the Adjudicative Process of Enclosure 2 of the same 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): AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

Sub-para. 1.f: AGAINST APPLICANT

Sub-para. 1.g: AGAINST APPLICANT

Sub-para. 1.h: AGAINST APPLICANT

Sub-para. 1.i: AGAINST APPLICANT

Sub-para. 1.j: AGAINST APPLICANT

Sub-para. 1.k: FOR APPLICANT

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Sub-para. 2.a: AGAINST APPLICANT

Sub-para. 2.b: AGAINST 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge