

DATE: November 27, 2001

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-01610

## **DECISION OF ADMINISTRATIVE JUDGE**

**ROGER C. WESLEY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Michael H. Leonard, Department Counsel

Katherine Ergstrom, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant with a history of delinquent debts, including child support arrearage, attributable to periods of unemployment in 1998 and 1999, shows considerable progress in paying on three of his debts, while documenting mistake on another and removal of still another from his credit report due to write off. He is in the process of deeding back his time share and is current with his court-ordered child support payment plans. Despite a relatively short period of repayment seasoning, he shows good promise for overcoming financial difficulties associated with an aberrant period of income disruption and surmounts Government concerns about his past debt delinquencies. Clearance is granted.

### **STATEMENT OF THE CASE**

On June 14, 2001, 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 July 7, 2001, and requested a hearing. The case was assigned to this Administrative Judge on August 21, 2001, and scheduled for hearing on September 21, 2001, 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 five exhibits; Applicant relied on one witness (himself) and eleven exhibits. The transcript (R.T.) of the proceedings was received on October 9, 2001.

### **PROCEDURAL ISSUES**

Prior to the close of the hearing, Applicant requested leave to supplement the record with documentation of (a) a title report from his time share company re: return of his time share, (b) a confirming letter from the collection agency of a home security account re: a claimed mistaken debt, and (c) payment of \$200.00 to a collection agency on a listed \$2,308.00 delinquent debt. There being no objection, and good cause showing, Applicant was afforded an additional 23 days to supplement the record. Within the time permitted Applicant provided documentary evidence of his \$200.00 payment, a service agreement with the identified home security company that shows this debt to belong to another as claimed, and explanations of his conversations with the time share company re: his options for obtaining a release from any further liability o a returned time share. There being no objection from Department Counsel, and good cause being shown, Applicant's post-hearing submission is accepted as exhibit L.

### **STATEMENT OF FACTS**

Applicant is a 45-year old soft-ware engineer who seeks a security clearance at the level of secret.

#### **Summary of Allegations and Responses**

Applicant is alleged to have financial difficulties arising from accumulated credit card debt delinquencies, consumer and time share debts and court-ordered-child support payments, totaling in excess of \$26,000.00 on his aggregate debts and child support obligations in the amount of \$2,045.00 a month.

For his response to the SOR, Applicant admitted some of his debts: his debts to two of his credit card creditors in the respective amounts of \$6,142.00 and \$2,308.00, and his time share debt of \$9,349.00. He admitted, too, his court-ordered child support payments. But Applicant denied being indebted to his other listed credit card debts: these for \$6,045.00, \$536.00 and \$2,045.00, respectively.

#### **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.

#### **Financial history**

Applicant encountered financial problems with his credit card debts in the late 90s following periods of unemployment (in 1998 and 1999) and court-ordered child support payments (*see ex. 2; R.T., at 25*). Unable to respond to delinquency notices from his consumer creditors, he ignored them. None of these creditors holding accounts totaling in excess of \$17,000.00 (five in all) ever took any legal action against Applicant to enforce their collection rights.

During a period of extended professional employment (in 1994), Applicant purchased a time share for \$13,000.00. He made regular monthly payments to a trust company until he lost his job in 1998. Believing his unemployment transition would be short one, he took no immediate action to stretch out his time share payments in the months that followed.

After being interviewed by DSS in May 2000 about his delinquent finances, Applicant had his 401(k) retirement assets transferred over to his new employer. When he transferred his funds, he had approximately \$42,000.00 in his plan. He made this transfer with the intention of invading his plan to obtain funds to pay off his delinquent credit card and time share debts. Before he could execute repayment efforts, however, he received a court order to pay an additional \$628.00 a month to his son bore to him by his estranged spouse (divorce final in 1993). This was in addition to the \$1,453.00 monthly child support he was already making at the time to his other two children. Repaying his 401(k) retirement plan (which represents a consolidation of his old and new 401(k) plans) costs him approximately \$732.00 a quarter through checks made payable to the plan (*see R.T., at 77-78*).

Earnest in his intention to pay off his old credit card debts, Applicant contacted a consumer credit counseling service (CCC) in May 2000 and arranged an appointment with their staff in September 2000 to look into setting up a financial plan to pay off his old debts (*see ex. 2; R.T., at 74-75*). Applicant did keep his appointment with CCC, but was unable to work out a plan with the available resources at his disposal (*see R.T., at 74*).

Since receiving the SOR, Applicant has entered into repayment agreements with several of his credit card creditors, one involuntary and the rest voluntary. On his creditor 1 debt (with a \$6,045.00 balance) his account is currently being garnished at the rate of \$830.00 a month (*see* exs. 3-5 and H; R.T., at 50-52, 69). Garnishment of his income by creditor 1 followed the creditor's notice of garnishment in August 2001 (*see* ex. H; R.T., at 46). Addressing his creditor 5 debt (with a \$2,308.00 balance), Applicant entered into a repayment arrangement requiring him to make \$200.00 monthly payments, which he has been doing and in the process reduced his debt balance with creditor 5 (*see* exs. 3-5, E and E; R.T., at 69-70, 80-81).

Besides his payments to creditors 1 and 5, Applicant makes \$27.00 monthly payments on his \$536.00 delinquent debt with creditor 2 (*see* ex. B). And he documents settling his debt with creditor 3 in March 2001 for the agreed figure of \$1,868.74 (*see* ex. C; R.T., at 32-33). While he documents his reported debts with creditors 4 and 7 to have been removed from his credit report, only his \$181.00 debt with creditor 7 was incorrectly attributed to him (*see* ex L; R.T., at 65). He admits to having a delinquent account with creditor 4 which the creditor essentially wrote off as a bad debt and removed from his credit report. (*see* ex. D; R.T., at 89-90).

Currently, only Applicant's time sharing indebtedness with creditor 6 remains resistant to payment or other resolution (to include write off). Previously accepting return of his time share, he opts to take the option 2 furnished him by the creditor (*viz.*, relinquishment of all rights in his time share and only awaits the creditor's obtaining the deed for him to sign over (ex. L; R.T., at 38-39). With this time sharing creditor Applicant reached an apparent agreement and currently awaits only the receipt of the deed for him to sign over to the creditor (*see* ex. L). This is expected to occur in the not too distant future. Whether Applicant would still be liable for any deficiency is unknown by Applicant (*see* ex. L; R. T., at 39), but unlikely.

While no visible time limits have been set to Applicant's continued child support payments, Applicant shows no let-up in his continued court ordered child support payments to his three children, broken down as follows: payments of \$1,500.00 for two of his children and \$582.00 withheld monthly from his pay to cover his 13-year old son from his first marriage (*see* ex. I; R.T., at 58-59) for a total of \$2,022.00 a month (*see* R.T., at 71-72). On two of his children, his monthly payments are being applied to owed arrearage, \$5,050.00 in all (R.T., at 72-73). He is credited with staying current with his payments, though, now that he has addressed the accumulated arrearage.

With Applicant's income generated from his current gross monthly income of \$6,532.00 and anticipated quarterly bonuses (*see* ex. I; R.T., at 65-66), he can be expected to stay abreast of his debts. He is aided somewhat in meeting his living expenses by living at home with his mother; even though he pays her rent (R.T., at 80, 85-87). Still, he acknowledges living paycheck to paycheck (R.T., at 73).

### **POLICY**

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 1. The behavior was not recent.

MC 3. The conditions that resulted in the behavior were largely beyond the person's control (*e.g.*, loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation).

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

### **Burden of Proof**

By dint 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 the facts proven have a nexus to the applicant's eligibility to obtain or maintain a security clearance. The required showing of nexus, 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 fell behind with a number of his creditors over the past few years. His delinquencies include several credit card accounts, a time share and child support. These collective financial problems create judgment and reliability issues germane to appraising his eligibility to access classified information

Following extended periods of unemployment between 1998 and 1999, Applicant became delinquent in a number of his debts: most credit-card related, but one involving a time share, in addition to his becoming delinquent in child support payments.

Two of Applicants' five covered debts were previously disposed of: one by a settlement (*see ex. C*) and another (*see ex. L*) by confirmation of the debt's belonging to another. Unable to resolve his other debts through consolidation with the aid of a counseling service, he turned to self-help after receiving the SOR. Security determinations, of course, have never been confined to risk considerations associated with the elimination of debts, irrespective of source and means: They embrace as well an applicant's overall financial history, in order to shed light on his most recent conduct as an indicator of recurrence risks. From Applicant's history of financial difficulties come implicit judgment/trust concerns.

Although Applicant cannot be faulted for incurring all of his consumer debts and child support obligations, or for falling behind during periods of unemployment, some judgement imprudence must be imputed to him for not making more concerted efforts to address them when he regained full time employment. Security concerns justifiably attach to

Applicant's failure to make more earnest efforts to repay his old creditors, either through individual work-out efforts, or collective debt consolidation. Appraising the security significance of Applicant's financial deficiencies, several Disqualifying Conditions (DC) of the Adjudicative Guidelines (for financial) apply: DC 1 (history of not meeting financial obligations) and DC 3 (inability or unwillingness to satisfy debts).

To Applicant's credit, he has since worked out satisfactory payment arrangements with two of his remaining three credit card creditors, with the fourth being removed from his credit card report following write-off as a bad debt. In the same vein, Applicant has come to resolution with his ex-spouse and the court on his child support obligations to their child, and with the mother of the remaining two children, also with court approval: both with respect to his arrearage and current obligations. He continues to make regular child support payments through a combination of withholding and monthly checks. Only his time share commitments are not fully resolved at this time. And Applicant documents his active current efforts to deed back his time share to the seller. He now awaits only the creditor's obtaining the deed for his execution. This obligation appears to be close to a final resolution that likely will not include any deficiency exposure to Applicant, given his home state's anti-deficiency legislation in place. Under the circumstances presented, Applicant may take advantage of several of the mitigation conditions covered by the Administrative Guidelines for financial issues: MC 3 (beyond person's control) and MC 6 (initiated good faith effort to repay creditors). Overall, Applicant provides enough in extenuation and mitigation, gauged from not only his extenuating circumstances attending his debt accumulations, but his somewhat seasoned efforts to repay his creditors, even if his repayment efforts are mostly still a work in progress. Favorable conclusions warrant, accordingly, with respect to the allegations covered by sub-paragraphs 1.a through 1.h of Guideline F.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive.

### **FORMAL FINDINGS**

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS 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.f: FOR APPLICANT

Sub-para. 1.g: FOR APPLICANT

Sub-para. 1.h: 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.

Roger C. Wesley

Administrative Judge