

DATE: July 24, 2002

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-21316

**DECISION OF ADMINISTRATIVE JUDGE**

**ROGER C. WESLEY**

**APPEARANCES**

**FOR GOVERNMENT**

William S. Fields, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant comes with a history of debts attributable to relying on his ex-spouse to pay the family's bills, which led to judgments, garnishments and wage attachments, most of which were listed in the SOR as previously discharged by prior involuntary garnishment. As to his remaining listed debts, he documents discharge of his debts either through voluntary payment or repayment agreements, and provides sufficient documentation of maturity and earnestness in his achieving financial responsibility to carry his evidentiary burden. Clearance is granted.

**STATEMENT OF CASE**

On October 24, 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 November 26, 2001, and requested a hearing. The case was assigned to this Administrative Judge on January 24, 2002, and on April 2, 2002 (following Applicant's return from overseas duty), was scheduled for hearing. A hearing was convened on April 22, 2002, 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 ten exhibits. Applicant relied on two witnesses (including himself) and eight exhibits. The transcript (R.T.) of the proceedings was received on April 30, 2002.

**PROCEDURAL ISSUES**

Before the close of the hearing, Department Counsel moved to strike sub-paragraph 1.g for reasons it was duplicative of the identical allegation covered in sub-paragraph 1.e of the SOR (*i.e.*, a debt owed in the amount of \$700.00 plus costs

and court fees on an adverse judgment obtained against Applicant in July 1999 for unpaid rent, which was unpaid as of January 18, 2001). There being no objections from Applicant, and good cause being demonstrated, the Government's motion was granted.

Prior to the close of the hearing, Applicant requested leave for the record to be kept open to permit him the opportunity to supplement the record with documentation of his satisfaction of his State A debt, his outstanding warrant with State B, and his veterinary debt. There being no objections, and good cause being shown, Applicant was granted an additional ten (10) days in which to supplement the record. Government was granted two (2) days to respond. Within the time permitted to supplement the record, Applicant provided copies of State A correspondence and canceled checks documenting his satisfaction of the covered indebtedness and a canceled check covering the issued warrant from State B. Applicant did not, however, document his payment of the \$74.00 veterinary debt. Government interposed no objection to Applicant's exhibits, and they are accepted as Applicant's exhibits I and J, respectively.

### **STATEMENT OF FACTS**

Applicant is a 30-year old electronic technician for a defense contractor who seeks a security clearance.

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

Applicant is alleged to have accumulated numerous debts on creditor accounts that have become delinquent and are unpaid: They comprise six consumer-related debts totaling in excess of \$4,000.00, four judgments exceeding \$6,500.00 in aggregate indebtedness, and \$250.00 to a state municipal court on an outstanding warrant issued in connection with his alleged failure to appear on charges of engaging in prostitution arising out of a citation issued in September 1995.

Allegedly, Applicant has a history of judgments and involuntary wage garnishments levied against him: They comprise an IRS garnishment in 1993 for back taxes totaling \$728.45 (later satisfied through payroll deductions), a judgment for unpaid rent totaling \$850.00, taken in February 1998 (later satisfied through payroll deductions), two wage garnishments issued by a State B municipality in March and August 1998, respectively, approximating \$443.00 in the aggregate (later satisfied through payroll deductions), two tax liens filed against him in October 1997 and June 1999, respectively, by a State B municipality, approximating \$754.00 in the aggregate, for tax years 1996 and 1997, and a wage garnishment by a State A country agency in 1999 to satisfy past and current child support obligations.

According to the SOR, Applicant signed a sworn statement for DSS in January 2000, in which he confirmed a \$403.00 net monthly remainder after paying expenses and debts (exclusive of the ones listed in the SOR).

For his response to the SOR, Applicant admitted some of his debts: his \$250.00 owed to State B on an outstanding warrant and the numerous listed garnishments and liens, which he has since satisfied. Applicant denied the balance of the alleged debts, and claimed one of the debts (the one for \$700.00 owed on a judgment for unpaid rent) to be a duplicate. He admitted to having a \$403.00 net remainder each month after paying expenses and debts.

#### **Relevant and Material Factual Findings**

The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference adopted as relevant and material findings. Additional findings follow.

Applicant incurred a considerable number of consumer debts during his first marriage, which lasted just two years. Between 1993 and 1995, Applicant incurred consumer debts with some six creditors, which in the aggregate totaled in excess of \$4,000.00. After his divorce in 1995, he struggled to stay current on his debts with just his own income, and soon fell behind with a number of his creditors. Besides his consumer debts, Applicant became delinquent in his rent and was sued by his landlord. The landlord obtained a personal judgment against Applicant in July 1999 for \$700.00 in unpaid rent. This followed a previous judgment obtained by the same landlord in 1998 for \$850.00 in rents owed, which was satisfied through payroll deductions. Applicant was subjected to a civil judgment by State A in August 1996 in the amount of \$4,797.00 for unemployment insurance overage, and became indebted to a State A municipality in the amount of \$250.00 on an outstanding warrant for failure to appear on pending charges of engaging in prostitution.

Applicant's financial problems continued to plague him long after his divorce in 1995. Two creditors initiated garnishment actions in 1998 on debts totaling \$139.00 and \$304.98, respectively. These debts were ultimately satisfied through payroll deductions. Applicant's wages were attached by another creditor: This occurred in 1999 by a State B municipality to satisfy past and current child support obligations. Also, a State C municipality filed tax liens against Applicant for unpaid taxes: one in 1997 for tax years 1996 and 1997 in the aggregate amount of \$548.60 and another for \$206.15 in unpaid personal property taxes for tax year 1998. Each of these liens were satisfied through payroll deductions.

Of the listed unpaid debts in the SOR, Applicant is able to document his satisfaction of several of them: Applicant paid his National Guard debt for \$285.00 in full in June 2001 (*see ex. A*); he paid off his \$700.00 plus back rent judgment in January 2002 (*see ex. C*); he satisfied his \$5,100.00 (with accrued interest) State A judgment back in 1996 (*see exs. F and I*); he paid his imposed \$250.00 State A fine in April 2002 (*see ex. J*); and he fulfilled his deferred payment plan with creditor j in May 2000 (*see ex. E*). Several of Applicant's listed debts still remain unresolved, however: his veterinary debt, his \$541.44 State A utility debt, and his two consumer accounts, totaling \$1,657.00 and \$1,321.00, respectively.

Applicant offers several explanations for his still unresolved debts: prior unwillingness of his ex-spouse to help pay off their joint debts and the running of pertinent statutes of limitation on several others (*i.e.*, his large consumer debts and his utility debt) and high child custody obligations to his ex-spouse, many of which did not vest until after he received positive proof of paternity of a child born to his first spouse in 1997 (*see R.T.*, at 62), following their divorce (in September 1995) and re-acquaintance (*see ex. 4*). During his marriage to his first wife, Applicant relied on his wife to take care of the bills, and experienced a real "wake-up call" when he returned to their apartment following their split to retrieve some belongings, only to find envelopes stuffed with old checks that were apparently not remitted to creditors (*see R.T.*, at 64-65). Up to this time, Applicant did not appreciate the extent of his financial delinquency.

Since his marriage in 1999 to his current spouse Applicant has become responsible for the care of five children: two from his marriage to his first spouse and three from his current marriage (*see R.T.*, at 70). Applicant's current spouse is a homemaker who cares for their child by their marriage, in addition to her two children from her first marriage). Applicant and his current spouse have made a major commitment to achieve and maintain financial stability. In furtherance of their commitment, Applicant assures he and his current spouse are living within their means and are not taking on new credit lines (*see R.T.*, at 66). Nonetheless, he leaves unresolved a considerable number of unresolved debts, which become merged in a past history of judgments, liens, garnishments, and wage attachments, which for several years became his chosen means of paying off his debts following his divorce from his first spouse. Withholding was utilized to discharge not only the debts covered by sub-paragraph 1.1 of the SOR, but also his delinquent student loan (*see ex. 9*). Of these old debts covered by sub-paragraph 1.1, Applicant continues to pay child support every pay period for the care of his two children by his first spouse, which according to the latest child support order totals approximately \$206.00 a pay period, and \$600.00 a month (*see R.T.*, at 59, 70).

Applicant did seek credit counseling after receiving the SOR, but was advised that several of his debts (debts b, c, and k) no longer appear on his latest credit report because they are older than seven years (*see ex. A*; *R.T.*, at 48, 54-55). Upon receiving this information, he went home and made attempts to contact these old creditors but could not find anyone with a current record of these debts. He was advised by the same credit counseling service that these same debts are barred by State A's relevant statute of limitations. His only other still unpaid debt from his previous marriage (debt d) would also appear to be time barred. According to Applicant, he was able to contact this creditor, only to be told "they do not know of the debt" (*see R.T.*, at 48-49).

Applicant's pay checks fluctuate from month to month. So, even though he listed a \$403.00 net monthly remainder in his signed, sworn statement given to DSS in January 2000 (*ex. 2*), he can not be fully certain of what his overtime will be from month to month (*see R.T.*, at 60). To better ensure available income to pay not only his current debts, but also the mortgage loan he took out with his father to finance his home, Applicant followed his father's sound advice and set up a deposit account to better ensure a steady monthly income stream and provide an automatic payment vehicle for repaying his father who holds his home mortgage (*see R.T.*, at 76-77). Deductions are routinely made from Applicant's pay entitlements and deposited in his father's federal credit union fund for repayment of his father's mortgage advances (*see R.T.*, at 76). Applicant currently owns four vehicles and makes approximately \$64,000.00 a year. His current

spouse supplements his own income with the \$600.00 a month she receives in child support from her former husband. Applicant maintains a 401(k) retirement account, which is currently worth approximately \$16,000.00 (*see* R.T., at 64).

Applicant is well regarded by his superiors at work and is credited with being a reliable and trustworthy employee. His father (a retired petty officer, who held a security clearance) described the restorative steps he convinced Applicant to undertake to repair his finances in the wake of the rash of judgments and garnishment actions he confronted. Applicant's father is favorably impressed with the way Applicant has abided by the wage deductions he established at the former's urging. Applicant's father remains very encouraged by the way Applicant has learned to manage his finances the last couple of years (*see* R.T., at 77).

## **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 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 4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control.

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

### **Burden of Proof**

By virtue 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 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.

### CONCLUSION

Applicant comes to these proceedings with a history of security-significant delinquent debts that include judgments, garnishments, tax liens, and write, most of which have paid, but a few of which now lie outside the pale of pertinent statutes of limitations. Applicant's past debts for the most part trace to a period when he was young and in a marriage that became a struggle that ultimately ended in divorce. The divorce, in turn, left Applicant as the lone responsible party left to address the accumulated debts during the marriage.

Of his listed eleven outstanding debts, seven (debts a, e, f, g, h, I, and j) have either been satisfied or are being paid down through repayment agreements, while four (creditors a, b, d, and k) have not been paid but are time barred. Applicant's debt problems are attributable to youth and immaturity and a short marriage that ended in divorce. With the divorce, Applicant's joint debt burdens quickly became Applicant's sole responsibility to discharge. It was both his long history of debt delinquencies, judgments and garnishment actions, coupled with his still unattended to debt delinquencies following his divorce, that raised initial security concerns about the core risks associated with financial difficulties in general: at risk to pressure or compromise to perform illegal or dishonest acts to raise funds to repay the debts.

For the first few years following his divorce, Applicant made grudging headway with his listed creditors, but little more. Most of his debts were reduced to judgment and satisfaction by involuntary garnishment and wage attachment. Pressed by added family obligations to provide financial support for his new wife and children (one of whom was born to him by his current spouse), Applicant made few voluntary efforts to deal with his outstanding creditors before he received the SOR. With the exception of the creditors previously satisfied by involuntary collection actions, his repayment efforts directed towards his old creditors are for the most part recent. But in the weeks and months following the issuance of the SOR, he is known to have made some very concerted efforts to address his old creditors with voluntary payments and payment arrangements. Much of the turnaround can be attributed to the influence of his father and new spouse who have helped him to learn the importance of discipline in managing his personal finances.

As for the balance of his outstanding debts (reduced to just four), Applicant has for over a year now been exempted from any legally enforceable responsibility for his consumer, veterinary and utility debts (creditors a, b, d, and k). Each of these debts has been rendered legally uncollectible by reason of State C's five-year statute of limitations in effect for claims arising in written contract (as here). *See* Sec. 8.01-246 of State C's Rev. Stats. Were these State A creditors to attempt to utilize State A's long arm statute (*see* Rules 4:4-5(a); 4:4-4(b)(1)(A)(B) of State A's Civil Rules) to enforce collection on their debts, they could be expected to encounter a slightly longer limitations period for contract claims (express or implied), but not enough to escape the State's limitations bar (six years). *See* Tit. 2A, c.14, Sec. 1 of State A's General Law. That Applicant may have a moral obligation to take care of these barred debts does not make the debts any more enforceable. True, uncertainty about a debt's enforceability (regardless of age or negotiating difficulties) has never been a sufficient justification to exonerate an applicant from his payment responsibilities, for reasons distinguishable from the present case. *See* ISCR OSD No. 99-0625 (August 17, 2000).

As a legal mechanism for dissolving debts, limitations statutes historically provide debtor protections in *para materia* with the federal bankruptcy laws, and entitle debtors to their peace from suit once the pertinent limitations period has expired (as here). Without any legal enforceability of either of his creditor b, c, d, and k debts at this time, Applicant cannot be realistically imputed to be at risk to compromise or pressure: core concerns of Guideline F of the Adjudicative

Guidelines. Still, our Appeal Board has never confined risk considerations to the elimination of debts that result from bankruptcy discharges, but rather it has looked to the applicant's overall financial history to shed light on his most recent conduct as an indicator of his recurrence risks. *See* ISCR OSD 98-0349 (February 3, 1999); ISCR OSD 97-0016 (December 31, 1997); ISCR OSD 87-0438 (April 18, 1989). The reasoning is this: While a bankruptcy discharge may give a debtor a fresh start, the discharge does not equate to a seasoned track record of financial reform. *See* ISCR OSD 98-0445 (April 2, 1999). In other words, our Board has implied judgment/trust concerns when considering the security significance of a bankruptcy discharge, quite separate from enforceability concerns. *See* ISCR OSD 97-0783 (August 7, 1998). While our Appeal Board has never formally considered the effects of a statute of limitations bar on residual judgment questions in a Guideline F context, the bankruptcy analogy is instructive.

Each of Applicant's covered debts vested at a time when Applicant was young and immature, and in a difficult marriage. Some judgement imprudence must be imputed to him for ignoring the debts until they were taken to judgment or garnishment action, or in several instances, until the limitations bar precluded their collection. Initial security concerns justifiably attach, accordingly, to his failure to contact these creditors earlier to work out repayments. Appraising the security significance of Applicant's financial deficiencies, several Disqualifying Conditions (DC) of the Adjudicative Guidelines (for financial) are applicable: DC 1 (history of not meeting financial obligations) and DC 3 (inability or unwillingness to satisfy debts) apply.

However, virtually all of Applicant's listed debts (both those previously resolved involuntarily and the residual ones listed as outstanding in the SOR) were incurred during a period when Applicant was involved in a struggling marriage and were later imposed on Applicant to resolve unilaterally following his surprised discovery of the unpaid bills. These old debts are entitled to some extenuation by Applicant's considerable unawareness of the debts (having relied on his first spouse to pay the bills) before his 1995 divorce: They are mitigated by a host of mitigating conditions applicable to financial issues: MC 3 (circumstances beyond Applicant's control); MC 4 (the person has received counseling) and MC 6 (good faith effort to resolve the debts). Age of the debts (over six years now), and payment or payment arrangements with all but four of the listed debts (*i.e.*, creditors b, c, d, and k), are mitigating. That he chose to pay his creditors 100 cents on the dollar instead of seeking bankruptcy or other repayment plan that relies on less than full debt repayment, is worthy of some credit. No question but that either bankruptcy or reduced pro-rata payoffs through debt consolidation would have necessitated considerably less commitment in hard dollars from Applicant than the full payoff method he committed to, even if belated and partially involuntary.

The time barring of Applicant's remaining four debts (not exceeding \$3,600.00 in all) collectively neutralize any active Applicant exposure to coercion, pressure or compromise due to cash needs. In this regard, Applicant may claim additional mitigating benefits under the whole person considerations covered in E.2.2 of Enclosure 2 of the Directive.

Overall assessment of Applicant's finances is one of substantial progress towards stabilizing his finances and clearing away his old debts that might have exposed him to security risks of pressure or coercion to generate funds to repay the debts, for so long as they were viable. While still subject to family-related financial pressures to support his current spouse and five children, the pressures certainly appear to be manageable when gauged by the current state of his financial affairs, his reinforced payment plan organized with his father, and the time bars in place with respect to the four still unpaid debts covered in the SOR.

Crediting Applicant with risk-absorbing extenuation and mitigation is not meant to diminish the imputed high expectancies of trust and candor that are extended to those who hold a security clearance and accept the fiducial obligations that accompany holding a clearance: Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. Applicant convinces, though, that both his immaturity and circumstances associated with his assumed obligations for the five children he became accountable to from his respective spouses constricted his ability to re-pay his old debts earlier. With counseling and disciplined changes in the managing of his finances (aided considerably by his father), his turnaround has been encouraging and a source of promise of financial stability for the future. Predictable judgments warrant that he will be able to keep up with his debts in the future and avoid the kind of payment problems he experienced in the past.

Applicant successfully carries his extenuation/mitigation burden and in doing so surmounts Government's concerns about his being exposed to security risks of pressure and coercion for so long as he is delinquent in his debts. Favorable

conclusions warrant with respect to sub-paragraphs 1.a through 1.l of Guideline F.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the E.2.2 whole person considerations 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

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

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.

Roger C. Wesley

Administrative Judge