

DATE: November 26, 2002

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-21558

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Katherine A. Trowbridge, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of delinquent credit card debts arising from making extended repairs on a piece of rental property being prepared for his parents to live in. While he extenuates his old debts, he fails to mitigate them through demonstrated efforts to either pay them down, consolidate them, seek Chapter 13 relief, or finance them through a credit line on his house, and he fails to absolve himself of security risks associated with unresolved debts and unwillingness to address them through the variety of options still available to him. Clearance is denied.

STATEMENT OF THE CASE

May 31, 2002, 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 9, 2002, and requested a hearing. The case was assigned to this Administrative Judge on August 1, 2002, and on August 21, 2002, was scheduled for hearing on September 12, 2002 (amended from August 22, 2002). A hearing was convened on September 12, 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 three exhibits; Applicant relied on two witnesses (including himself) and no exhibits. The transcript (R.T.) of the proceedings was received on September 20, 2002.

STATEMENT OF FACTS

Applicant is a 43-year old assembler for a defense contractor who seeks to retain his security clearance.

Summary of Allegations and Responses

Applicant is alleged to be indebted on several delinquent debts: Discover I in the amount of \$5,436.00, Discover II in the amount of \$4,163.00, and Bank aster Card in the amount of \$7,896.00.

Additionally, Applicant is alleged to have falsified his security clearance application (SF-86) by deliberately failing to disclose his two delinquent Discover debts.

For his response to the SOR, Applicant admitted his Bank Master Card debt, but denied two delinquent Discover debts, claiming the two debts are actually one and the same. Applicant denied any deliberate falsification of his SF-86.

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's problems with his covered credit card debts began with his father's passing in August 1996. Applicant bore the financial responsibility for his father's funeral expenses. With approximately \$12,000.00 already accrued on his Discover II and Bank Master Card accounts, and no available cash or other assets to draw upon to defray his father's funeral expenses, Applicant was faced with the choice of either taking care of his credit card debts or putting himself into further debt to satisfy the expenses associated with his father's funeral. He chose the latter course.

Later (in 1996 or 1997), Applicant attempted to work out repayment arrangements with his Discover and Bank Master Card creditors, but to no avail. Neither creditor would accept less than 2 per cent of the monthly balance in any repayment plan agreed to. Because Applicant could not afford such terms at the time, he declined to accept their terms, or follow through with any payment arrangements with the creditors.

Since 1996, Applicant has made no payments of any kind on either his Discover I or Bank Master Card debt. While the SOR lists two Discover accounts, Applicant's explanations and latest credit report convince there was and is only one delinquent Discover account: the second one (Discover II) reported in the SOR and credit report with a debit balance of \$4,163.00 (*see ex. 3; R.T., at 25, 37-38*). The first listed Discover account actually reflects a reopened credit card account in November 1999 that incorporates the charged off \$4,163.00 balance and compounded penalties and interest. Unclear is whether the Discover I account was opened because of any contact Applicant had with the creditor.

Applicant has not heard from either his Discovery II or his Bank Master Card creditor since 1996 or 1997. Each debt has been subsequently charged off, and Applicant has demonstrated no intention of ever repaying either of his creditors, citing the creditors' prior charge offs and past unwillingness to work with him.

Applicant attributes most of the \$12,000.00 in his accrued credit card debts to repairs undertaken on the rental home he and his wife used to own (*ex. 2; R.T., at 30, 35*). Applicant and his spouse went into debt on the needed repairs on their rental home in the expectation Applicant's parents would move into the house following his father's 1996 retirement. Applicant fully expected his parents to pay rent, which Applicant (in turn) planned to use to repay his credit card debts. Once his father passed away, though, his mother decided against moving into the house. Sometime in 1998, Applicant sold the house, incurring a \$1,200.00 loss from the sale, but a loss, nonetheless considerably lower than what he would have experienced without making the repairs (*see R.T., at 31, 35*). But for his credit card creditors financing the repairs to the house, he would have had little recourse but to "bulldoze" it (*see R.T., at 35*).

Except for his two listed delinquent debts, Applicant remains current in all of his accounts. While he makes more than he did in April 2001 (when he was last interviewed by DSS), his expenses have increased as well, especially his child support. Still, he currently claims \$400.00 to \$500.00 a month in net remainder, a considerable increase over the \$158.00 net remainder he reported in April 2001 (*see ex. 2; R.T., at 33-34*). With his additional income, he and his wife were able to purchase another house: This they did in December 2000. Despite this increased remainder (after allowing for the \$512.63 in monthly mortgage payments), Applicant has made no further attempts to contact his creditors, explore consolidation of his delinquent debts, seek Chapter 13 protection, or look into any additional equity-line credit to discharge his old credit card debts. Unable to initially work out any payment arrangements with his creditors, he is

resolved to let the debts stand as write-offs, barred now from enforcement by pertinent statutes of limitation.

When asked to complete an SF-86 in February 2000, Applicant encountered problems in downloading his answers on his business computer. So, he completed a hard draft SF-86, which he turned over to a department assistant for converting onto a computer printout (*see* R.T., at 26-27). He doesn't really know what happened to his Discover debt: He cannot be certain whether he left it off the original draft or whether it was simply omitted from his draft in the transcription process (*see* R.T., at 27). All he knows for sure is once the completed form was returned to him for execution, he signed it and forwarded it on to the Government without any real scrutiny of the returned form that he can recall (*see* R.T., at 40). The executed SF-86 form he turned over to the Government includes his Bank Master Card debt (*see* ex. 1), but not his Discover debt. Applicant's claims of mistaken omission of this single Discover debt (the only Discover debt he admits to) are accepted.

When later interviewed by Agent A of DSS in April 2001, Applicant was asked about any prior delinquent debts. While Agent A recollects bringing a current credit report to the DSS interview, neither he nor Applicant could recall any confrontation of the latter over omission of the listed Discover debt in the SF-86 (*compare* R.T., at 41-43 with R.T., at 54-55). Applicant is credited with voluntarily disclosing his omitted debt free of any confrontation.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) lists "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 E2.2 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 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Personal Conduct

Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, 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, falsification or misrepresentation 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:

MC 1 The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability.

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 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 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 accrued considerable credit card debt following his father's death in 1996. Using two credit cards he had at the time (Discover and Bank Master Card), Applicant elected to accrue over \$12,000.00 in debt to finance the cost of his father's funeral. Because his mother decided not to move into the house he had prepared for his parents' rental, he was forced to sell the property for a net loss.

While Applicant's incurred credit card expenses for home repairs are understandable and extenuated, his explanations for failing to later tend to these debts are not. Once Applicant's creditors rebuffed his initial attempts to work out modest repayment arrangements with the resources he had at his disposal at the time, Applicant still had several options to turn to: debt consolidation, Chapter 13 relief, counseling, and even later exploration with the same creditors about more substantial repayment arrangements with the added net remainder he had acquired from his raises at work. Applicant chose none of these options, and as a result cannot be credited with the mitigating efforts necessary to absolve him of the pressure and judgment risks associated with being in extended debt. Unfavorable conclusions warrant with respect to sub-paragraphs 1.a and 1.c of the Adjudicative Guidelines governing financial considerations.

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 omission of his Discover I debt in his SF-86. So much trust is imposed on persons cleared to see classified information, even those like Applicant who do not actually access such information but who require a clearance to enter and exit the work facility, that deviation tolerances for incidents of trust betrayal are calibrated narrowly.

Because Applicant persuades that his omissions of his two delinquent credit card debts were the result of a good faith failure to check the computer printout returned to him for review and execution, it is not necessary to assess the timing

and circumstances of his confirming disclosures of his two credit card debts to Agent A in applicant's ensuing interview. MC 1 (the information is unsubstantiated) of the Adjudication Guidelines for personal conduct is available to applicant.

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

In reaching my recommended 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): AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT

Sub-para. 2.a: FOR 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