

DATE: June 25, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-23661

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Thirty-five-year-old Applicant, who is employed by a defense contractor, has failed to mitigate nine delinquent debts, including two judgments against him, totaling more than \$17,284.00. The sudden loss of his wife's income as a result of injuries she sustained in an automobile accident in December 1995 mitigates three debts that became delinquent in 1996. However, Applicant has not been able to payoff or substantially reduce any of his delinquent debts, which extend back as far as 1994. Even though he recently executed an agreement with a consumer credit counseling service to repay creditors, it does not cover all of them, including the largest debt of \$7593.72, resulting from a judgment against him. Moreover, Applicant has not been able to make the monthly payment under his agreement. Clearance is denied.

STATEMENT OF THE CASE

On July 29, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement Reasons (SOR) to Applicant. The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant her access to any classified information and recommends that his case be submitted to an Administrative Judge. On September 5, 2002, the Applicant executed a response to the SOR and requested a hearing. This case was assigned to the undersigned Administrative Judge on November 25, 2002. A notice of hearing was issued on December 3, 2002, and the hearing was held on January 7, 2003. During the hearing, Nine Government (Govt) exhibits, three Applicant (Ap) exhibits, and the testimony of two Applicant witnesses, including Applicant, were received. The transcript (Tr) was received on January 15, 2003.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, including Applicant's admissions to the allegations in SOR subparagraphs 1.a through 1.i and 1.l through 1.m, I make the following findings of fact:

Applicant is a 35-year-old security analyst employed by a defense contractor and is seeking a security clearance. He is married and has two sons, ages 7 and 5, as well as a step-son. Prior to being hired by a defense contractor, Applicant worked three jobs simultaneously: he was employed by a coffee distributor; worked as a barber; and delivered newspapers.⁽¹⁾ In addition to his current employment with a defense contractor, he still works part-time as a barber in an effort to pay living expenses.⁽²⁾

Applicant's wife was paralyzed as the result of an automobile accident on December 28, 1995.⁽³⁾ As a result of her condition, she lost her job with a grocery store.⁽⁴⁾ A year later, she was hospitalized and diagnosed with muscular dystrophy (MS).⁽⁵⁾ Since recovering from these conditions, Applicant's wife has only been able to work on and off, providing daycare.⁽⁶⁾ She also has a history of suffering from kidney stones and kidney infections.⁽⁷⁾ In May 2001, she stopped receiving monthly child support payments of \$275.00.⁽⁸⁾ Recently, she has been diagnosed with cancer of the cervix.⁽⁹⁾

Applicant has incurred delinquent debts on seven bank credit card accounts, as specified in SOR ¶ 1.a through SOR ¶ 1.g. On these accounts, as specified in SOR ¶ 1.a through SOR ¶ 1.g, Applicant owes delinquent debts of at least \$2204.00, \$280.00, \$710.00, \$102.00, \$599.00, \$92.00, and \$218.00, respectively.⁽¹⁰⁾ The credit card account referred to in SOR ¶ 1.j is one of the same accounts included in SOR ¶ 1.a through SOR ¶ 1.g.

Applicant owes delinquent indebtedness of \$223.00 to a creditor as specified in SOR ¶ 1.h.⁽¹¹⁾ He owes delinquent indebtedness of \$3,103.00 to a creditor as specified in SOR ¶ 1.i for an automobile loan.⁽¹²⁾ Five years ago, Applicant became engaged in a dispute with the car dealer, from whom he purchased the vehicle, over who should pay for repair work. The dealer kept the vehicle and Applicant never pursued a legal action or consumer complaint against the dealer.⁽¹³⁾

Applicant owes a judgment of \$7,593.72, as specified in SOR ¶ 1.k.⁽¹⁴⁾ He incurred the judgment for property damage he caused through his negligent operation of an automobile on July 18, 1992. Applicant fell asleep at the wheel of his car.⁽¹⁵⁾ The judgment was entered on October 18, 1994. In addition to the judgment, Applicant owes interest, at a rate of 9 % from the date of the accident, and costs of \$18.00.

Applicant owes a judgment of \$2,480.00, as specified in SOR ¶ 1.m.⁽¹⁶⁾ He incurred the judgment for attorney fees for services provided in 1994 in connection with a traffic accident. The judgment was entered on January 23, 1997. In addition to the judgment, Applicant owes interest, at a rate of 9 % since the date of judgment, and costs of \$30.00.

Applicant owes a judgment of \$2,775.00, as specified in SOR ¶ 1.l.⁽¹⁷⁾ He and his wife incurred the judgment for breaking their apartment lease, following the injuries she sustained in the automobile accident.⁽¹⁸⁾ They moved in with Applicant's mother.⁽¹⁹⁾ The judgment was entered on November 18, 1997. In addition to the judgment, Applicant owes interest, at a rate of 9 % since the date of judgment, costs of \$42.00, and attorneys fees of \$693.00.

On September 4, 2002, Applicant entered into an agreement with a consumer credit counseling service to repay 11 delinquent debts, including two that resulted in judgments against him. They include those delinquent debts specified in: SOR ¶ 1.a through SOR ¶ 1.e; SOR ¶ 1.h through SOR ¶ 1.i; and SOR ¶ 1.l through SOR ¶ 1.m.⁽²⁰⁾ The agreement provides for Applicant to pay \$370.00 per month, commencing in October 2002, to repay the 11 obligations, which total \$14,586.00. Since executing the agreement, Applicant has not been able to make the payments.⁽²¹⁾

Applicant's net monthly income is sufficient to meet total monthly expenses but it is not sufficient to enable him to repay his delinquent debts.⁽²²⁾

POLICIES

Section E2.2.2 of the Directive requires that "any doubt as to whether access to classified information is clearly

consistent with national interest will be resolved in favor of national security." The burden of producing evidence initially falls on the Government to present evidence, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Directive E3.1.14. Once the Government meets its burden, the burden then shifts to the applicant to present evidence to refute or mitigate the Government's evidence and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

Guideline F - Financial Considerations: the concern is that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Conditions that could raise a security concern and may be disqualifying include:

A history of not meeting financial obligations (Disqualifying Condition 1);

Inability or unwillingness to satisfy debts (Disqualifying Condition 3).

Conditions that could mitigate security concerns include:

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) (Mitigating Condition 3);

The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (Mitigating Condition 6).

CONCLUSIONS

The facts in this case establish that Applicant has a history of not meeting financial obligations (Disqualifying Condition 1). They further establish that since 1994, Applicant has incurred 12 delinquent debts, including three judgments against him, which he has not been able to payoff or otherwise resolve (Disqualifying Condition 3).

In the face of these disqualifying conditions, Applicant has presented evidence of mitigation. His wife's injury from the automobile accident in December 1995, as well as her subsequent medical conditions, prevented her from continuing to work (Mitigating Condition 3). This sudden loss of income household income would help explain Applicant's inability to address his debts at that time. I conclude that it mitigates Applicant's two accounts charged off as bad debts in 1996 (SOR ¶ 1.d and SOR ¶ 1.g). It also mitigates the debt he and his wife incurred for breaking their apartment lease, following her automobile accident (SOR ¶ 1.1).

However, the loss of his wife's income in 1996 cannot excuse a pre-existing delinquent debt that Applicant should have made some progress in resolving, such as the 1994 judgment for damages caused by Applicant's negligence. It also cannot excuse a majority of his delinquent debts that were charged off as bad debts several years later. By that time, Applicant should have been able to make some progress in resolving them.

Applicant has entered into an agreement with a consumer credit counseling service to repay delinquent debts (Mitigating Condition 6). However, he did not do so until the eve of filing his response to the SOR. In addition, the agreement does not cover all of his delinquent debts, including the largest debt of \$7593.72, resulting from a judgment against him. Moreover, Applicant has not been able to make the payments established by the agreement to repay his creditors. Under these circumstances, Applicant's actions do not constitute a good faith effort to repay creditors or otherwise resolve debts that is necessary to establish Mitigating Condition 6.

SOR ¶ 1.a through SOR ¶ 1.g, pertaining to Applicant's delinquent debts on credit cards, in each case specify the particular bank to which Applicant is indebted and these debts can be found on his credit reports that have been admitted into evidence. By contrast, SOR ¶ 1.j merely alleges an amount owed to a national credit card and his credit reports in evidence do not reflect this as a separate debt. Based on the evidence, SOR ¶ 1.j would appear to refer to one of Applicant's credit card accounts already specified in the SOR rather than identifying an additional debt.

Applicant's finances may allow him to meet his current living expenses, but they do not enable him to satisfy any of his delinquent debts. Given Applicant's failure to mitigate most of his delinquent debts, totaling more than \$17,284.00, I must find accordingly.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: For Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: For Applicant

Subparagraph 1.m: Against Applicant

Subparagraph 1.n: Against Applicant

DECISION

In light of all the evidence in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Signed

Roger E. Willmeth

Administrative Judge

1. Tr 34-35.
2. Tr 62; 75.
3. Tr 34; Ap Ex A at 4.
4. Govt Ex 2 at 1.
5. Tr 34; Ap Ex A at 4.
6. Tr 55.
7. Tr 35; Ap Ex A.
8. Tr 19; 77.
9. Tr 35.
10. Govt Ex 4; Govt Ex 6 (Applicant submitted this document as part of his response to the SOR).
11. Govt Ex 4.
12. Govt Ex 6; Tr 69-71.
13. Tr 69-71.
14. Govt Ex 7.
15. Tr 54.
16. Govt Ex 8.
17. Govt Ex 9.
18. Tr 50-51.
19. Tr 51.
20. Govt Ex 6.
21. Tr 63.
22. Tr 73-75.