

DATE: August 15, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-05755

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 debts accumulated during periods of unemployment and tight resources following his divorce from his first wife. While most of his old debts languished under extenuating circumstances related to his sudden and unexpected unemployment, the debts have not since been mitigated through demonstrated efforts to either pay them down, consolidate them, or seek bankruptcy or Chapter 13 relief. As such, Applicant fails to absolve himself of security risks associated with his still unresolved debts and unwillingness to address them through the variety of options available to him. Clearance is denied.

STATEMENT OF THE CASE

February 11, 2003, 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 March 17, 2003, and requested a hearing. The case was assigned to this Administrative Judge on April 8, 2003, and was scheduled for hearing on May 9, 2003, following a granted continuance to enable Applicant to obtain counsel. A hearing was convened on May 9, 2003, 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 eight exhibits; Applicant relied on three witnesses (including himself) and seven exhibits. The transcript (R.T.) of the proceedings was received on May 20, 2003.

PROCEDURAL ISSUES

At hearing, the Government asked to amend the SOR to strike sub-paragraphs 1.k and 1.l. of paragraph 2.a (criminal

conduct). With Applicant not objecting and good cause being shown, the Government's amendment request was granted. Applicant made no request to amend his own answer as the result of the Government's approved amendment of its SOR: He stands on his answer.

Prior to the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with confirmation of his 1999 payments to creditors 1.a and 1.f, and the IRS for tax years 1999 and 2000. There being no objections from the Government, and good cause being shown, Applicant was afforded ten days to supplement the record. Government was afforded 2 days to respond. Within the time allowed, Applicant submitted copies of letters from creditors 1.a and 1.f confirming these accounts have been payed in full, along with transcripts from the IRS re: payment of his federal taxes for tax years 1999 and 2000. While the Government does not object to the admission of these documents, it disclaims any mitigation force from the exhibits. Applicant's post-hearing submissions are admitted as Applicant's exhibits H, I and J, respectively.

STATEMENT OF FACTS

Summary of Allegations and Responses

Applicant is a 43-year old electronics technician who seeks a security clearance. He is alleged to have incurred numerous delinquent debts: Specifically, he is alleged to have incurred twelve delinquent debts, that exceed \$22,000.00 in the aggregate, in addition to having his car repossessed in November 2001 because he could no longer make the payments.

Additionally, Applicant is alleged to: (a) be in arrears in back child support payments in the amount of \$6,500.00, (b) have failed to file federal income tax returns for the 1999 and 2000 tax years and (c) to be indebted to the IRS in the amount of \$1,288.00 for federal income taxes for tax year 1999 and \$647.00 for tax year 2000.

Applicant is alleged to have committed criminal conduct by virtue of his alleged failure to file federal income tax returns for tax years 1999 and 2000, and failure to make his required child support payments.

And Applicant is alleged to have exhibited poor judgment, unreliability and untrustworthiness in connection with his alleged (i) delinquent medical care and child support payments, (ii) failure to file federal income tax returns, and (iii) repossessed car.

For his answer to the SOR, Applicant admitted to having committed criminal conduct by failing to make his child and medical support payments, and to being delinquent on some of his listed debts: his medically related debts to creditors 1.c, 1.d and 1.e, his Discover Card and certain bank debts covered by sub-paragraph 1.k. He denied, however, any past indebtedness to the balance of the creditors listed in the SOR.

STATEMENT OF FACTS

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

Applicant married his first wife (W1) in 1981 while he was in active military service and had two children by her. Altogether, he served twenty years of active military duty before his discharge in February 1998.

Applicant divorced W1 in September 1996: His divorce was finalized in September 1996 (*see* ex. 1; R.T., at 42). As a part of their divorce decree, Applicant was ordered to pay monthly child support to his two children: \$325.00 to each child for a total of \$650.00 monthly. For the ensuing two years he spent in the military, he was able to keep his debts current. Following his military discharge in February 1998, he soon found work in the private sector that enabled him to keep up with his both his current and old debts (*see* exs. 1 and 6). However, his post-discharge job only lasted six months before he was laid off in September 1998. Applicant remarried in October 1998 to W2. With only the single income of his new spouse to manage their finances, Applicant and W2 struggled to pay their bills and failed with many of their creditors. Applicant's credit summaries report each of the listed commercial creditors as delinquent: some became delinquent in 1998, while others (like his automobile purchase in 2000) became delinquent in 2000. Unable to

continue making payments with creditor 1.k by January 2001, creditor 1.k repossessed the vehicle and later assigned the \$7,925.00 deficiency to creditor 1.g (*see ex. 4; R.T., 38-40*). So, for SOR purposes, herein, creditors 1.g and 1.k are one and the same. Along with his commercial creditors, Applicant fell behind in his child support payments during the six months he was unemployed. When he did return to work (with another employer) in May 1999, he did not address his accrued delinquent debts. Nor did he begin to make his monthly child support payments during the first year of his re-employment. Not until July 2000 did he return to making monthly child support payments. By this time, he owed considerable back child support. He also became indebted to several creditors providing medical services to his children, which he has declined to pay, claiming W1 did not make use of his available TRICARE benefits, as he had instructed her to do (*exs. 3 and 7; R.T., at 35-36*). Applicant continues to decline to take care of these medical debts with creditors 1.c, 1.d and 1.e and expects to have them removed entirely from his report in a few years (*ex. 1; R.T., at 73-77*).

In December 2000, W1 (aware by this time of Applicant's re-employment) returned to court to seek part of Applicant's military retirement pay. Without his knowledge, she obtained a court order awarding her 37 per cent of his military retirement pay and proceeded to attach it. Both this determined entitlement and his child support allotment represented 55 per cent of Applicant's pay (*see R.T., at 44*). Because these deductions together exceeded the allotment levels permitted by military regulations, Applicant's child support allotment was canceled (*see R.T., at 44*). Once the attachment order went into affect, Applicant permitted his child support payments to drift for the duration of 2001. By September 2001, his back child support arrearage had reached the aggregate sum of \$6,500.00. Beginning in January 2002, Applicant resumed making voluntary child support payments of \$450.00 a month to W1: with \$325.00 of this payment representing current child support to one of the two children and the remaining \$125.00 representing catch-up payments on the back support payments due (*see R.T., at 45*). Because one of his two children had reached 18 years of age by this time, his current support obligations to this child ceased.

Already deep in debt by 1999, Applicant failed to file timely federal tax returns for tax years 1999 and 2000. The IRS constructed a 1999 return for him in October 2001 based on available income sources and allowable exemption deductions and arrived at a tax due of \$1,275.65, inclusive of interest and penalties to date (*see ex. 4*). In the same month (*i.e.*, October 2001), he filed his federal tax return covering the year of 2000 (*see ex. 5; R.T., at 85-86*). Based on his reported income and expenses for this year and added penalties and interest, he was determined by the IRS to owe the Service \$647.00. Applicant documents taking care of his federal tax obligations for both 1999 and 2000 (*see exs. H and J; R.T., at 87-88*).

Currently only his federal tax debts for tax years 1999 and 2000, and his relatively small debts to creditors 1.a and 1.f have been fully satisfied (*see exs. H and I*). While he has managed to reduce his back child support payments to an estimated \$4,565.38 as of May 2003 (*see exs. A and D; R.T., at 51-55*), he has no plan to accelerate payment of his back child support beyond the earmarked \$110.00 he has committed to. As to his remaining debts, he neither claims nor documents any plan to discharge or address any of them in the foreseeable future. However, he is well regarded by his supervisor and colleagues as a conscientious and trustworthy technician who consistently follows company rules and orders (*see R.T., at 94-98*).

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 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 4 Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, *such as engaging in activities which, if known, may effect the person's personal, professional, or community standing or render the person susceptible to blackmail.*

DC 5 A pattern of dishonesty or rule violations, *including violation of any written or recorded agreement made between the individual and the agency.*

Mitigating conditions:

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

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 to 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 accrued considerable debt, much of it credit card-related, following his divorce from W1 and ensuing loss of his job. Struggling to pay their bills on mostly his new spouse's income for a considerable time spanning 1998-1999, while Applicant was out of work, he and W2 considered bankruptcy but ultimately just let their delinquent debts drift.

Creditors like the three listed creditors who charged off their debts were essentially ignored after Applicant lost his job in 1998. Altogether, Applicant and his current spouse accrued over \$20,000.00 in delinquent obligations with these creditors (creditors 1.h, 1.I, and 1.k) holding consumer debt. The listed debts alone account for the bulk of Applicant's delinquent debts, which have been written off by the creditors and are now likely barred from enforcement by pertinent statutes of limitation. 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 incurring of his listed debts are somewhat understandable and extenuated, considering the financial predicament he and W2 found themselves in following Applicant's loss of employment in September 1998, his failing to later tend to these debts is not. Once Applicant's creditors stopped pressing Applicant and W2 for repayment, they had several options to turn to: debt consolidation, Chapter 13 relief, counseling, and even exploration of Chapter 7 bankruptcy relief. Applicant chose none of these options, and continues to rely exclusively on the creditors' charge-offs and lack of any enforcement action to date.

An applicant's shown history of ignoring undisputed creditor obligations even when resources become available for repayment bears close resemblance to an applicant's being asked to subordinate his own private interests to the Government's security interests when the two conflict. Over time, our Appeal Board has shown general consistency in disallowing applicant claims to mitigation based on charge-offs and limitation bars on debts previously unpaid due to cited extenuating circumstances. *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 only his discharge of the much smaller tax and consumer debts to rely on to advance his mitigation claims, he lacks the probative mitigation necessary to absolve him of the pressure and judgment risks associated with being in debt.

So, while Applicant may take advantage of MC 3 (conditions largely beyond the person's control) of the Adjudicative Guidelines to extenuate his debt delinquencies, he may not fully invoke the mitigating provisions of MC 6 (initiated good-faith effort to repay overdue creditors), absent more concerted efforts to address most of his old creditors than reliance on charge offs, lax enforcement and even pertinent statutes of limitations.

Finding insufficient mitigation of Applicant's accrued delinquent debts does not minimize his personal accomplishments with his employer and in his community. For these credits, Applicant merits acknowledgment and commendation. Unfavorable conclusions warrant, accordingly, with respect to sub-paragraphs 1.b through 1.e, 1.g through 1.j of the Adjudicative Guidelines governing financial considerations. Applicant is entitled to favorable conclusions with respect to sub-paragraphs 1.a, 1.f and 1.k and 1.l.

Besides placing himself at continued risk to compromise due to outstanding debts, Applicant's failure to take care of his medically-related debts and mount more aggressive efforts to repay his back child support accumulation associated with his two children by his former spouse (W1) reflects poor judgment, unreliability and untrustworthiness covered by the Adjudicative Guidelines for personal conduct. DC 4 (conduct that increases an individual's vulnerability to coercion, exploitation or duress) and DC 5 (pattern of dishonesty or rules violations) may be invoked by the Government. While Applicant has made some demonstrated progress in reducing his outstanding child support obligations, it has not been enough to absolve him of security risks associated with his past disregard of these obligations. More time is needed to restore the judgment and trustworthiness lapses implicit in his failure to honor these parent responsibilities. Unfavorable conclusions warrant, accordingly, with respect to sub-paragraphs 1.c through 1.e and 1.j above.

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: FOR 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: FOR APPLICANT

Sub-para. 1.g: FOR APPLICANT

Sub-para. 1.h: AGAINST APPLICANT

Sub-para. 1.i: AGAINST APPLICANT

Sub-para. 1.j: AGAINST APPLICANT

Sub-para. 1.k: AGAINST APPLICANT

Sub-para. 1.l: FOR APPLICANT

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Sub-para. 3.a: AGAINST APPLICANT

Sub-para. 3.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