

DATE: December 31, 2002

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-08197

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Department Counsel

FOR APPLICANT

Tim W. Pleasant, Esq.

SYNOPSIS

Applicant accumulated certain debts during his marriage, most of which were either assumed by his spouse, paid, or unproven and subsequently withdrawn from Applicant's credit reports. Several of the listed debts could not be identified as Applicant's and were likely debts initiated by his ex-wife following their arch 1994 separation. Applicant is highly regarded by his employer and absolves himself of risks associated with financial problems. Clearance is granted.

STATEMENT OF THE CASE

On June 7, 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 26, 2002, and requested a hearing. The case was assigned to this Administrative Judge on July 29, 2002. Pursuant to notice, a hearing was convened on September 6, 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 five exhibits; Applicant relied on seven witnesses (including himself) and thirty-seven exhibits. The transcript (R.T.) of the proceedings was received on September 16, 2002.

STATEMENT OF FACTS

Applicant is a 35-year old senior enterprise engineer for a defense contractor in State A who seeks a security clearance.

Summary of Allegations and Responses

Applicant is alleged to have a history of financial difficulties: Eleven debts totaling in excess of \$15,000.00, which are either delinquent, referred for collection, or charged off. Applicant is alleged to have a personal financial statement as of July 2000 that indicates he is able to pay his listed debts, but has failed to make much effort to resolve them, despite a net monthly remainder of \$1,203.00, after expenses.

For his answer to the SOR, Applicant admitted several of the listed debts, but denied the others as either not his debts, as debts established by his spouse while he was on active military service, or debts previously paid off. Of those debts he accepted as his, he claimed inability to contact the merchants to pay them off (*i.e.*, creditors c, e, and f), and previous satisfaction (*i.e.*, creditor g).

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, an AF veteran of eight years who served his country in Desert Storm, accumulated a number of debts during his marriage, several of which he ascribes to his spouse either as the initiator or the beneficiary. Several of these debts are disputed by Applicant. Two of these disputed debts involve two different federal credit union accounts: an account opened with creditor A (#680968) in March 1994 and approved in May 1994 (*compare* exs. 3, 5 and K) in the names of both Applicant and his wife (W), and an account with creditor B (#965011600) opened in September 1996, almost two years following Applicant's separation and divorce from W.

Applicant consistently attributed the creditor B account to his wife (*see* exs. Y and AA), claiming the account was opened in State B in September 1996, where he had not resided since 1991. The same account (*viz.*, #965011600) is carried in an earlier June 2000 credit bureau report (CBR) as a slow paying account (*see* ex. 5) and in a more recent April 2002 CBR as a written off bad debt (*see* ex. 3). Nothing further is known about this particular account that can be verified in the record. While this account is carried as an active account of Applicant's in his July 2002 CBR, no reasons are assigned for its carried status (*see* ex. X). Given Applicant's divorce and settlement, the ensuing opening of the account in September 1996 (following Applicant's formal separation), and the earnest attempts of Applicant's FSO to trace the identity of the user of his social security number through both DEERS and SSA, there is ample evidence to credit Applicant with a good faith dispute of the creditor B debt.

More difficult to reconcile is Applicant's creditor A account (#680968). This account was initially applied for in December 1993 and formally applied for in arch 1994. It was finally approved in May 1994, some three months after Applicant separated from W. Applicant claimed initial surprise to find this account listed in his April 2002 CBR and filed fraud reports with both DEERS and the Social Security Administration (SSA). While Applicant now accepts the creditor as one that he and W jointly initiated a loan application with, he insists W was the beneficiary of the loan proceeds. Applicant is corroborated in part by the undated letter from the creditor (*see* ex. KK). In this letter, creditor A claims W agreed to pay \$50.00 on the account (albeit she denied full benefit of the loan). While the loan was written off by creditor A in September 1996 as a bad debt (*see* exs. S and KK), it shows up on Applicant's more recent April 2002 credit report as "paid as agreed" (*see* ex. 3) before being deleted entirely from Applicant's most recent credit report (ex. X). Whether payment on the account was resumed by W or someone else is unclear.

That Applicant may not have received any benefits from the creditor A loan does not by itself exonerate himself him from loan liability. Nor can Applicant be excused from creditor A responsibility by the running of any pertinent statutes of limitations. Expiration of the time reserved for bringing an action on a claim affects only enforceability of the claim, not responsibility for it. Inferences do warrant in Applicant's favor that he was genuinely surprised to find the creditor A account still listed as an outstanding debt in his credit reports and that he maintains a good faith dispute over his responsibility for the creditor A debt (since written off).

Applicant disputes other debts in the SOR. He disputes the debts with creditors H and I as accounts he knows nothing about (*see* R.T., at 79-84). The creditor H account is reported in Applicant's June 2000 CBR (ex. 5) under two names for the same \$1,063.00 amount: one in the name of creditor H listed in the SOR (shown to have been jointly opened in 1991) and the other in the name of a retail service account opened in December 1995 (after Applicants' divorce), which

shows to be a current account. Absent more information about the creditor H account, too many similarities exist between the two accounts shown in the June 2000 CBR to avert treating them as one (quite possibly W's, or perhaps another's).

While the listed creditor I account reported in Applicant's June 2000 CBR shows to have been a jointly opened account in 1991, it shows an origin in a third state (State C) where Applicant is not known to have resided (*see ex. 2; R.T., at 83-84*). Like his creditor H account, this creditor I account was also removed from his latest CBR (*see ex. X*). To whom the creditor I account belongs is unclear. Enough probative confusion and uncertainty exists, however, to accept Applicant's claims the account either does not belong to him, or it has been assumed by another.

A fourth disputed account involves the deficiency claim of creditor J. Unlike Applicant's other disputed accounts, Applicant acknowledges a creditor relationship with this creditor. A car he was refinancing from the predecessor creditor was repossessed from Applicant in March 1995. This car had been originally purchased by Applicant in July 1994. Applicant later became too overextended on the \$18,000.00 a year salary he was earning at the time to maintain his \$650.00 monthly payments on the car. After being rebuffed by the original lender about voluntarily surrendering the car, the lender repossessed it sometime around May 1995 (*ex. 4*). With \$27,000.00 still owing on the car when it was publicly auctioned, Applicant was advised by the lender the car was sold for \$32,000.00 (*see ex. 5*). Told of no deficiency on the car loan, he never received any deficiency notice from the lender or its assignees (*see ex. 5; R.T., at 84-86*). So, when he received a call from creditor J in 1997 demanding payment of a \$2,500.00 deficiency, he was surprised and disputed it (*R.T., at 85-86*). After this conversation, he never heard from creditor J again and assumed his explanations were accepted. Applicant's dispute with creditor J is good-faith based and partially corroborated by his July 2002 CBR (which reflects a deletion of the reported creditor J deficiency).

Of the remaining past due debts listed in the SOR, one (an AF exchange account with creditor D) was satisfied to the extent of \$613.00 (*see ex. B*). While Applicant's credit report reflects a one-time tax deduction to satisfy his creditor D debt, it does not indicate whether the deduction reflects a part or full payment. Applicant insists the tax set-off represents full payment to creditor D and cites in support to his July 2002 CBR (reflecting deletion of the account) as probative proof of his full satisfaction claims. Without more documented evidence of a still existing debt to creditor D, Applicant is entitled to favorable inferences his creditor D debt was previously discharged.

Applicant admits responsibility for the four remaining debts listed in the SOR. Two of these four debts (creditors C and G) are documented to have been paid in full (*see exs. D and FF*). Since receiving the SOR, Applicant contacted the remaining two creditors (creditors E and F) to pay them off, but to no avail (*see R.T., at 74-75*). It is plausible for these debts to have been written off without any retained records by the creditors, given the small amounts of these debts and the time elapsed since their maturity.

According to his most recent personal financial statement (*see ex.4*), Applicant has the demonstrated ability to pay on any listed debts still his responsibility and has addressed another debt shown on his CBRs but not covered by the SOR (*see R.T., at 86-89*). He remains current on his other non-listed debts.

Applicant is highly regarded by his supervisors and colleagues on his computer support team, as well as by Government customer representatives with whom he regularly works in the course of providing computer-related services. He is credited with completing AF sponsored computer management courses (*see ex. N*) and receiving numerous performance awards recognizing his excellent contributions to the AF mission. Applicant received an earlier honorable discharge from the AF after completing an eight-year tour of duty in 1994.

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 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 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 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 debt during his five-year marriage to his ex-spouse. While several of the listed debts pre-date their separation in March 1994, others do not and are seriously disputed by Applicant. Applicant's claims are persuasive. Of the two credit union debts covered in the SOR, only one bears Applicant's signature that can be documented by the proofs: his creditor A debt. Applicant's assurances that this creditor a debt was assumed by his spouse as a part of their settlement agreement bears some corroboration from Applicant's June 2000 CBR (ex. 5), which shows the debt to be in active current status.

Other covered debts disputed by Applicant are good-faith based and excusable, as such. His disclaimed debt with creditor H that is identified in his same June 2000 CBR is confusingly similar to a listed identical debt balance with another creditor shown just below the Creditor H debt: It not only bears a similar name, but it is reported in current status. Whether this debt was assumed by W and is being kept current by her, or someone else, is unclear. The confusion is sufficient, however, to avert debt delinquency attributable to Applicant on this creditor H debt. The same holds for Applicant's disputed liability to creditor I, which has in any case been deleted from his latest CBR (*see* ex. X) and is no longer treated as a delinquent debt attributable to Applicant.

While Applicant acknowledges a creditor relationship with the predecessor of creditor J, he claims to have been exonerated of any deficiency by the predecessor in 1997 and has not been noticed with any further deficiency claim by creditor j since informing the creditor of the same in a later phone call. This debt, too, has been deleted from Applicant's latest CBR (ex. X) and is credited to Applicant as an unproven debt.

Of the remaining debts covered in the SOR, three (creditors C, D, and G) are credited to Applicant as paid in full. Applicant demonstrates that he made earnest good faith attempts to pay off the remaining two debts (creditors E and F), but could not obtain proper identification of the debts with the individual creditors. So, while Applicant now has the current resources to address his old debts, his failure to pay them (small as they are) is not for lack of trying. On the strength of the evidence presented, Government may invoke one of the Disqualifying Conditions (DC) of the Adjudicative Guidelines for financial considerations: DC 1 (history of not meeting financial obligations), but DC 3 (inability or unwillingness to satisfy debts) is not applicable here.

Based on the testimony and admitted documents, the bulk of Applicant's covered debts are either not substantiated to be delinquent debts he is currently responsible for, or they are extenuated and mitigated by virtue of his divorce and ensuing confusion over which debts he continued to be responsible for after his separation and divorce from W. Applicant may take advantage of several mitigating conditions of the Adjudicative Guidelines to extenuate and mitigation his actions: MC1 (behavior not recent), MC 3 (conditions largely beyond the person's control) and MC 6 (initiated good-faith effort to repay overdue creditors). Favorable conclusions warrant, accordingly, with respect to subparagraphs 1.a through 1.k of the Adjudicative Guidelines governing financial considerations.

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): 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

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