

DATE: June 27, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31362

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 his marriage to his ex-spouse. After dropping out of an initiated debt consolidation program in 1995, Applicant and his spouse ignored their mostly joint debts until he was issued an SOR. His most recent debt consolidation efforts are too incomplete and recent to provide the kind of repayment seasoning necessary to overcome raised financial concerns. Further, he deliberately omitted his delinquent debts in his SF-86 and made no prompt, good faith corrections. Clearance is denied.

STATEMENT OF THE CASE

On February 21, 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 18, 2003 and requested a hearing. The case was assigned to this Administrative Judge on February April 21, 2003, and was scheduled for hearing to be held on May 8, 2003. A hearing was convened on May 8, 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 four exhibits; Applicant relied on two witnesses (including himself) and four exhibits. The transcript (R.T.) of the proceedings was received on May 16, 2003.

PROCEDURAL ISSUES

Before the close of the hearing, Applicant requested leave to supplement the record with documentation of payment to creditors 1.c, 1.e, and 1.h, as well as the creditor 1.f/g accounts. There being no objection from the Government, and

good cause being shown, Applicant's request was granted. Applicant was afforded 7 days to supplement the record. Government was granted 3 days to respond. Within the time permitted, Applicant supplemented the record with a statement explaining his repayment efforts with creditors 1.c and 1.f/g and documented payment of his creditor 1.e and 1.h accounts. Government interposed no objections to the admission of these exhibits. These post-hearing submissions are admitted as Applicant's exhibits E, F, and G, respectively.

STATEMENT OF FACTS

Applicant is a 46-year old system field engineer for a defense contractor who seeks a security clearance.

Summary of Allegations and Responses

Under Guideline F, Applicant is alleged to have incurred excessive indebtedness: Specifically, he is alleged to have accrued nine separate debts in delinquent status, exceeding \$15,000.00 in the aggregate, which he has the means to discharge, after failed consolidation attempts.

Additionally, Applicant is alleged under Guideline E to have falsified his security clearance application (SF-86) by omitting his delinquent debts over 180 days and 90 days, respectively.

For his response to the SOR, Applicant admitted the debts attributed to him in the SOR, while claiming they were the responsibility of his ex-wife to discharge, save for the credit card account 1.a. He claimed he and his ex-wife entered into a credit counseling program in 1995, but were forced to withdraw from the program when remaining would have prevented them from replacing their wrecked car. Applicant claimed reduction in his available retirement earnings attributable to ordered alimony payments to his ex-wife. He also claimed recent entry into a debt repayment program to address his old debts. With respect to his SF-86 omissions, he claimed uncertainty as to the age of his delinquent debts, lack of trust in his ex-wife to acknowledge his debts, and the absence of any deliberate intent to falsify his debt picture. Applicant claimed to hold a security clearance for the better part of 25 years, during which time he has never had his judgment questioned. Applicant requested retention of an interim clearance for 6 to 12 months pending further evaluation of his financial situation.

Relevant and Material Factual Findings

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

Between 1986 and 1995, Applicant and his spouse (W) incurred a number of debts together, which they could not repay and later defaulted on. Comprising these debts are delinquent debts covered by creditor 1.a (\$1,400.00), creditor 1.b (\$1,2220.00), creditor 1.d (\$2,189.00) and the retail accounts of creditor 1.f/g (\$4,699.00 and \$5,806.00, respectively).

Applicant and W sought credit counseling in 1995 in an effort to consolidate their debts and entered into a debt management program with the intent of paying off these debts (*see* response; R.T., at 51-52). By the program's terms, Applicant and W were precluded from assuming any more credit while in the program. For the time they stayed in the program, they complied with the terms of their consolidation agreement and incurred no additional credit debt.

While in their debt management program, Applicant's car was severely damaged. Since he and W only had one car between them, they faced a major challenge: Stay with their debt program and do without an automobile or vacate the program, finance another vehicle and try to pay their debts on their own. After meeting with their debt program counselors, they elected to drop out of their debt program and resume full individual responsibility for their debts.

Between 1995 and 2001, Applicant continued to rely on W to pay their debts and gave little thought to second guessing her assurances their bills were being paid. Discussing the bills became such a sore subject with W that Applicant essentially gave up and deferred to her taking care of their finances. For the duration of his marriage to W, Applicant never checked up to assure himself that his joint debts were being discharged.

Applicant and W separated in June 2001 and initiated divorce proceedings. His divorce from W was finalized in

September 2002 and is covered by a judgment of divorce and settlement. Under the terms of their settlement agreement, Applicant is required to pay W \$2,200.00 a month for the next three years, beginning in January 2003 (*see ex. D*). The settlement agreement makes no provision for assigning any individual or joint responsibility for taking care of the couple's joint debts. There is nothing in the settlement agreement to indicate how the couple's joint debts were to be paid. At this time, the listed debts in the SOR were aged and had been written off as bad debts by the covered creditors. And prior to issuance of the SOR, neither Applicant nor W made any demonstrable efforts to pay or enter into any form of repayment arrangements with any of these listed creditors.

After issuance of the SOR, Applicant entered into a repayment agreement with a debt consolidation firm (ex. B). His agreement covers his listed debts with creditors 1.a, 1.b, and 1.d, but not the balance of the listed creditors in the SOR. Beginning in March 2003, Applicant obligated himself to pay \$170.00 a month (*see ex. B*). His most recent payment (made in April 2003) was allocated between creditors 1.a, 1.b, 1.d, 1.h, and another creditor not covered in the SOR.

Applicant's post-hearing submissions claimed payment of his 1.e and 1.h debts, but nothing on his remaining debts to creditors 1.c, 1.f/g and 1.i. His latest efforts to contact creditors 1.c and 1.f/g were unsuccessful. Each of these creditors informed Applicant they would look into Applicant's old debts (*see ex. E*). Applicant is credited with paying off his listed debts covered in paragraphs 1.e and 1.h: a utility debt of \$195.00 and an investment-related debt of \$123.00, respectively (*see exs. F and G; R.T., 40, 44*)

Asked to complete an SF-86 in September 2001, Applicant answered in the negative to questions 38 (debts over 180 days delinquent) and question 39 (debts over 90 days delinquent). Applicant attributes his omissions of his delinquent debts to uncertainties over how long his debts were delinquent and whether they had been previously paid by W (*see R.T., at 68-69*). His explanations cannot be reconciled, though, with his 1995 consolidation attempts with many of these very same creditors or with his acknowledged awareness of the overdue status of at least some of the listed debts.

Having elected (jointly with W) to discontinue his debt consolidation efforts in 1995, Applicant made no identifiable follow-up attempt to address these debts until presented with an SOR. He was clearly aware of his continuing legal responsibilities for these jointly created debts; even though he took no concerted action to address them before the issuance of the SOR. Considering Applicant's disclaimers of any specific knowledge of the status of these debts when he completed his SF-86, his claims, juxtaposed against his past involvement with the debts, are too lacking in plausibility to gain acceptance. On the basis of the evidence presented, Applicant's explanations are too inconsistent and unsubstantiated to avert drawn inferences his omissions of his listed debts were made knowingly and wilfully.

When interviewed by a DSS agent in November 2001, Applicant did not acknowledge his delinquent debts when first queried about them by Agent A. Only after Agent A showed him his current credit report listing the debts did he admit the debts were his own (*see ex. 3*). Applicant's acknowledgments under these circumstances cannot avert inferences of confrontation.

Applicant is highly regarded by his immediate supervisor who considers him both reliable and trustworthy.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) require that each decision be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2. In making their decisions, judges must 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 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Personal Conduct

The Concern: 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 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:

None

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 decision after appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's suitability 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 by substantial evidence any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing on 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 misused 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.

CONCLUSION

Applicant accrued considerable debt between 1986 and 1995, much of it credit card-related. He and his wife at the time endeavored to pay off these debts through a consolidation program arranged in 1995, but dropped out of the program when faced with the challenge of adhering to the program's no new conditions and replacing their damaged vehicle. For

the ensuing six years preceding their separation and finalized divorce in 2002, Applicant and W essentially ignored their accumulated debts and permitted them to be written off without any enforcement action taken. Altogether, Applicant and his ex-spouse accrued over \$15,000.00 in delinquent debt, which Applicant has not addressed until after issuance of the SOR. 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 decision to vacate his debt consolidation program in 1995 is somewhat understandable given his circumstances at the time with his vehicle, his avoidance of any repayment efforts or checks on his creditors to ascertain payment status in the intervening years preceding his divorce is not. Once Applicant and W dropped out of their debt consolidation program they became responsible again for addressing their debts individually. By all accounts, neither Applicant nor W made any efforts to repay these bills: They were content to rely on the lack of any enforcement action by any of their creditors to avert payment.

An applicant's history of ignoring undisputed creditor obligations even when resources become available for repayment bears close resemblance to an applicant's being asked to place his own private interests in subordination to the Government's security interests when the two intersect with one another. Over time, DOHA's 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, much less disregard of payment obligations. *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 little to little repayment history to support his mitigation claims, he lacks the probative mitigation necessary to absolve him of the pressure and judgment risks associated with being in debt.

Because Applicant's repayment efforts are so recent and limited, it is too soon to credit him with any of the mitigation benefits covered by MC 6 (initiated good-faith effort to repay overdue creditors) of the Adjudicative Guidelines. More repayment seasoning is required before he may reasonably be credited with good-faith repayment efforts.

To find insufficient mitigation of Applicant's accrued delinquent debts is not to minimize his personal accomplishments with his employer. For these credits, Applicant merits acknowledgment and commendation. Unfavorable conclusions warrant, accordingly, with respect to sub-paragraphs 1.a through 1.d and 1.f, 1.g, and 1.i through 1.k of the Adjudicative Guidelines governing financial considerations. By contrast, favorable conclusions warrant with respect to sub-paragraphs 1.e and 1.h of the same Guideline.

Posing potential security concern as well are Applicant's omissions of his past due personal debts (exceeding 180 and 90 days, respectively) from his September 2001 SF-86. Applicant's explanations of his laboring under uncertainties of the status of his listed debts cannot be reconciled with either his prior consolidation efforts or ensuing disregard of these debts. Too implausible are his explanations, considering the multiple sources of information available to him about his debts, to enable Applicant to surmount the falsification implications of his omissions. While it is true that developed falsification jurisprudence within DOHA's Appeal Board and the courts nationally have never been tied to reasonable man tenets, credibility assessments must still take account of the surrounding circumstances when gauging motive and specific intent to falsify a document. *Cf.* ISCR OSD Case No. 01-06870 (September 13, 2002).

Applicant fails to dispel doubts about his withholding known information about the status of most of his listed debts (even if certain ones he could not recall). His ensuing acknowledgment of his debts in his first scheduled DSS interview came only after he was shown a copy of his credit report, and, as such, cannot qualify as a prompt, good-faith correction of any deemed unreasonable omission of his debt delinquencies.

Based on the strength of the evidence presented, Applicant may take no advantage of any of the available mitigating conditions for falsification under the personal conduct Guideline. Unfavorable conclusions warrant with respect to sub-paragraph 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: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

Sub-para. 1.e: FOR APPLICANT

Sub-para. 1.f: AGAINST APPLICANT

Sub-para. 1.g: AGAINST APPLICANT

Sub-para. 1.h: FOR APPLICANT

Sub-para. 1.i: AGAINST APPLICANT

Sub-para. 1.k: AGAINST APPLICANT

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Sub-para. 2.a: 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