

DATE: December 30, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-32101

ECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Nichole L. Noel, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of delinquent debts incurred between 1995 and 2001 during periods of his military deployment. The listed debts total over \$25,000.00 and remain significant (save for three which have been resolved) after some earlier unsuccessful debt consolidation efforts. Applicant's repayment efforts remain too much a work in progress to make any safe predictable judgments at this time about his debt resolution prospects. Additionally, Applicant omitted most of his debts when answering his June 2002 security clearance application. His concealment of relevant information about his finances raises security concerns about his judgment and reliability, which is not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On November 3, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant. The SOR 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, and recommended referral to an administrative judge for determination whether clearance should be granted or continued.

Applicant responded to the SOR on November 24, 2003, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on June 10, 2004 and failed to respond to the FORM within the 30 days afforded him. The case was assigned to me July 26, 2004.

SUMMARY OF PLEADINGS

Under Guideline F, Applicant is alleged to have accumulated 14 delinquent debts that exceed \$25,000.00. Under Guideline E, he is alleged to have falsified his June 2002 security clearance application (SF-86) by omitting his delinquent debts exceeding 180 days when responding to question 38 and by omitting all but one of his delinquent debts exceeding 90 days) when answering question 39.

For his answer to the SOR, Applicant admitted each of the allegations with explanations. He claimed most of the admitted debts were incurred by his spouse during his military deployments and he has both changed mortgage companies (concerning creditor 1.a) and has cleaned up his credit report with respect to a number of his other delinquent debts. He claimed, too, that he did not intentionally try to falsify his SF-86 and based his debt information on the basis of his current local accounts and billing at that time. Applicant claimed to be attending night classes while working in his current position and needed the clearance to keep his job and main source of support for himself and his family.

FINDINGS OF FACT

Applicant is a 39-year-old employee for a defense contractor who seeks a security clearance. 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 financial problems started to 1995 during his military deployments. He and his wife had purchased a home in their home state just months before he received his transfer orders for a two-year domestic deployment assignment. Once deployed, his wife quit her job and began using their credit cards to meet family expenses for her and their two children (ages 3 and 4 at the time). Applicant attributes much of his considerable consumer debt accruals to added mortgage debt and loss of spousal income during his initial deployment.

Following his return from his initial domestic military deployment, Applicant and his family settled in an area near the local base he was assigned to. Obligated to meet the mortgage obligations on the home they purchased in their home state, as well as their local housing and living expenses, Applicant and his wife struggled just to keep up with their current expenses and fell still further behind in their debts. While he took on a second job, his wife took a job working nights to help rebuild their finances. They tried debt consolidation for a few months, only to learn the company misappropriated some of the \$700.00 in monthly payments they were making.

Already burdened with the added expense of maintaining two homes, Applicant faced further financial pressures when he learned of his planned second deployment: this one abroad. Unable to make ends meet, he and his wife again tried debt consolidation, but to no avail. When he was unsuccessful in obtaining a release from his deployment assignment, he helped his spouse and family prepare for a return to their old home to live in while he was away on deployment. During this second deployment, he and his spouse continued to incur increased personal debt while trying to simultaneously cover his housing and utility expenses in both locations: all of this on just one household income, Applicant's.

Upon returning from his second deployment in 2001, Applicant decided not to re-enlist and sought employment in the private sector: first as an insurance agent, and then with his current company following a multi-month interval of unemployment.

To date, Applicant has made little tangible progress in paying his delinquent debts. While he was able to find new financing on his home (which he maintains in current status) and enlist the removal of some of his older debts from his latest credit report, he has not been able or willing to make much of a dent in paying down his older debts, despite a positive net monthly remainder of \$987.00 on his most recent personal financial statement (*see ex. 5*). He provides payment documentation (*see ex. 9*) of only two debts to date: creditor 1.d (for \$70.00) and creditor 1.g (for \$2,043.00). As for his remaining debts (four of which total in excess of \$4,000.00 and are over four years old), Applicant continues to resist bankruptcy initiation or credit counseling, despite expressed intentions to do so in his August 2002 DSS statement (*ex. 5*). He neither disputes any of the delinquent accounts and bad debts reported on his 2002 credit report nor provides any documented plan for addressing them.

Asked to complete an SF-86 in June 2002, Applicant omitted all of his delinquent debts when answering question 38 (addressing debts over 180 days) and omitted all but his mortgage debt (creditor 1.a) when answering question 39 (addressing debts over 90 days). He provides no explanation for his omissions in his DSS statement and indicates only in the cover letter to his answer that he based his negative answers on the status of his current accounts at that time and not his older debts which he had not addressed. His answers do not indicate any mistake or confusion about the questions and without more persuasive explanation are insufficient to avert drawn inferences of knowing and wilful

omissions.

When interviewed by a DSS agent in August 2002, Applicant acknowledged all of his debts, which implies he was shown his June 2002 credit report that shows the delinquent and charged off debts listed in the SOR. Inferences warrant, accordingly, that he was confronted with his credit report before he acknowledged the debts to be his incurred obligations (jointly and severally with his spouse).

Applicant provides several references of his character but not statements from any of the officials listed. Without statements from these references, little credit can be according them.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require 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

The 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.

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 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 2 The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily.

MC 3 The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an applicant's 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 SOR 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 material bearing, 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 cognizable 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 persuasion 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 delinquent debt between 1995 and 2001, which he has only partially addressed since his 2001 military discharge. His listed delinquent debts (14 in all) total over \$25,000.00 and have only been partially paid down since the issuance of the SOR in November 2003.

Despite his more recent efforts to identify and pay off several of his debts (to include his mortgage, few which he has refinanced with a new company) his old debts, Applicant remains obligated to all but three of the 14 creditors listed in the SOR. On this record, two of the Disqualifying Conditions (DC) of the Adjudicative Guidelines for Guideline F apply: DC 1 (history of not meeting financial obligations) and DC 3 (inability or unwillingness to satisfy debts).

While Applicant's accrued debts are accompanied by some extenuating circumstances (*viz.*, reduced income during his two military deployments and lack of steady good paying work for a number of months following his layoff in 2001), for the most part his finances have permitted modest attempts to pay on his old creditors with the resources available to him after he joined his most recent defense contractor in May 2002.

Applicant's debts are neither extenuated nor mitigated enough to enable him to take advantage of any of the mitigating conditions at this time. His military deployments (two years apart) at a time when he was obligated on a newly purchased home and a brief period of unemployment following his Army discharge, while problematic, do not appear to have been so significant or prolonged as to preclude his addressing his delinquent debts when he returned to work with his most recent defense contractor. Extenuation is not demonstrated sufficiently to enable him to invoke MC 3 (conditions largely beyond the person's control) of the Guideline. While he has paid two of the 14 delinquent debts and refinanced another, his overall repayment efforts remain a work in progress and insufficient at this time to invoke any of the available mitigating conditions of the Guideline, primarily MC 6 (initiated a good-faith effort to repay overdue creditors) based on his repayment efforts.

The Appeal Board has counseled against according much weight to belated efforts to address delinquent debts well after

the security clearance process has been initiated. *See* ISCR Case No. 02-33581 (July 20, 2004). Also, where there is insufficient evidence of repayment efforts after the conditions that contributed to an applicant's delinquent debts have passed, the Appeal Board has cautioned against crediting the applicant with either non-recent financial difficulties (MC 1 of the Guidelines) or excuse from addressing his delinquent debts (even those accrued because of extenuating circumstances). *See* ISCR Case No. 03-01059 (September 2004).

To Applicant's credit, he has since taken steps to accept responsibility for his old debts. At the same time, he has provided no viable repayment plan with his current resources. And his efforts to date are not of sufficient strength to enable him to mitigate security concerns associated with his longstanding delinquent debts.

Taking into account all of the circumstances of Applicant's accumulated debts, the absence of sufficient attention he has shown with his debts in the past, and recent efforts in addressing his debts, unfavorable conclusions warrant with respect to subparagraphs 1.b and 1.c., 1.e and 1.f, and 1.h through 1.n of the allegations governed by the Adjudicative Guidelines pertinent to Guideline F. Favorable conclusions warrant with respect to subparagraphs 1.a, 1.d and 1.g of the allegations covered by the Guideline.

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 omissions from his June 2002 SF-86. So much trust is imposed on persons cleared to see classified information that deliberate omissions of material information about an applicant's finances cannot be easily reconciled when assessing an applicant's clearance eligibility.

By omitting his past delinquent debts when responding to questions 38 and 39 of his SF-86, Applicant concealed materially important background information needed for the government to properly process and evaluate his security suitability. He makes no claim of misunderstanding the questions, which were posed in a straightforward way in the questionnaire. Applicant attributes his omissions to his focus on his current accounts (by inference not his old debts), which is not enough to avert drawn conclusions of knowing and wilful concealment. Applicant's omissions invite application of one Disqualifying Condition (DC) of Guideline E of the Adjudicative Guidelines: DC 2 (falsification of a security questionnaire).

Mitigation is difficult to credit Applicant with, since he failed to make prompt, voluntary disclosures of his omitted debt delinquencies when afforded the opportunity to do so in his follow-up DSS interview. Not only has the Appeal Board found the use of Mitigating Condition (MC) 2 of the Adjudicative Guidelines for personal conduct (isolated, corrected falsification) to be unavailable to applicants seeking mitigation by treating the omission as isolated, but it has precluded availability of MC 3 (prompt, good faith disclosure) as well in circumstances (as here) where the applicant has failed to take advantage of an earlier DSS interview opportunity. *Compare* ISCR Case No. 97-0289 (January 1998) with DISCR Case No. 93-1390 (January 1995). Applicant, accordingly, may not take advantage of either MC 2 (isolated omissions) or MC 3 (prompt, good faith correction of the falsification) of the Adjudicative Guidelines for personal conduct.

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

In reaching my 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: FOR APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

Sub-para. 1.f: AGAINST 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: AGAINST APPLICANT

Sub-para. 1.m: AGAINST APPLICANT

Sub-para. 1.n: AGAINST APPLICANT

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Sub-para. 2.a: AGAINST APPLICANT

Sub-para. 2.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. Clearance is denied.

Roger C. Wesley

Administrative Judge