

DATE: March 19, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-11747

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of delinquent debts he accrued during periods of reduced family income following his wife's disability and ensuing loss of permanent work, which he failed to address after his finances improved. With only unspecified assurances he will address his debts in the future when he is better positioned to do so, and no concrete plan for addressing his debts, he fails to mitigate security concerns associated with his past failures to address his delinquent debts. Clearance is denied.

STATEMENT OF THE CASE

On July 10, 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 August 8, 2003, and requested a hearing. The case was assigned to me on September 25, 2003, and was scheduled for hearing on December, 18, 2003. A hearing was convened on December 18, 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 three witnesses (including himself) and four exhibits. The transcript (R.T.) was received on January 2, 2004.

SUMMARY OF PLEADINGS

Under Guideline F, Applicant is alleged to have incurred numerous delinquent debts: He is alleged to have incurred 15 delinquent debts which exceed \$13,600.00 in total and to have a net monthly remainder of approximately \$32.00, indicative that he is financially unable to address his debts, which he has not.

For his response to the SOR, Applicant admitted most of his debt allegations, challenging only the listed debt to creditor 1.a (paid), creditor 1.l, which he claimed represents a double billing, the listed debt to creditor 1.n, which he claims unawareness of, and his alleged incapability of addressing his debts based on his \$32.00 a month net remainder.

FINDINGS OF FACTS

Applicant is a 41-year-old senior mechanical installer for a defense contractor who seeks to retain his security clearance. 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.

Applicant accumulated considerable medical bills in the early 90s in connection with his wife's (A) medical expenses. She required surgery, which Applicant's medical insurance failed to cover completely. She became disabled following her surgery and was no longer able to hold a job and help cover her bills. With his spouse no longer a source of income, Applicant was forced to assume a larger share of the family's household and educational expenses, which also entailed helping his three children attend college. To help reduce his financial burdens, he contacted the seller of his van in 1996 to try to interest the company in taking back the vehicle he had purchased. The company accepted his request and subsequently auctioned off the vehicle to satisfy the loan balance. The sale left a deficiency owing of \$7,507.00, which the lender unsuccessfully attempted to bill Applicant for.

Applicant explored credit counseling in 1993 and was told by his credit counselor that he would be better advised to pay his debts separately, rather than try to work out a consolidated payment plan. She suggested his van deficiency would no longer show up on his credit report in another year and that he would be better served to take care of his smaller medical bills initially. To date, though, he has made no attempts to pay these debts or explore repayment prospects with his individual creditors (*see* R.T., at 37-38). While he claims the creditor 1.l and 1.n accounts represent a double billed and erroneous debt, respectively, he provides no further documentation from either of these creditors to corroborate his claims, and has failed to date to contact them (R.T., at 38-40). Without some corroboration, these debts that appear on his credit report (ex. 4) remain attributable to him.

Before his father's death in 1992, Applicant and his family lived with his father in the father's house. After he passed away, Applicant and W moved into her mother's house, where they resided for about six months. During this period, his daughter and son moved into his father's house while Applicant was putting the house into shape to sell. In May 2003, Applicant sold his father's house. With the \$22,446.85 in net sale proceeds (after satisfying settlement charges and paying off the mortgages on the property), Applicant used his share of the proceeds (around \$5,300.00) to pay off a \$4,418.00 deficiency judgment taken by creditor 1.a (*see* exs. A and B; R.T., at 50-53) and some pending utility bills unrelated to any of the listed debts in the SOR. He did not use any of the residual balance, though, to address any of his remaining debts. Each of his remaining listed debts remain outstanding.

During the six months Applicant and W lived with W's mother, they helped her with her essentials's. W's mother had medicaid but no other resources to cover her expenses. Just before her mother's death in January 2003, W filed divorce papers in her behalf. Although the settlement decree specifies obligations of the father toward W's mother, neither W nor Applicant have any realistic prospects for collecting anything (R.T., at 66).

In the meantime, Applicant purchased the inherited interests of W's sisters in the home owned by W's mother. Applicant and W finalized their purchase of the home from his mother-in-law's estate in December 2003, paying about \$68,000.00 for the family home (R.T., at 44, 47-49). He supplements his own income (over \$30,000.00 a year) with his wife's disability payments, which currently net around \$485.00 a month (R.T., at 61). While he has taken on no more significant debts, he has taken no actions either to reduce his expenses. He has no specific plan to take care of his old debts, but hopes to address them in the future after his daughter finishes her college courses and he pays off his truck. He provides no concrete time table, though, as to when this is expected to occur.

Applicant appears to be highly regarded at work, where he is described by his supervisor and co-worker as a structural lead man who is very dependable and trustworthy (*see* ex. D; R.T., at 70-71).

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

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).

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's 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 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.

CONCLUSIONS

Applicant accrued considerable debt, some medical related, some related to deficiency balances on returned vehicles, and others involving utilities, in the early 90s after his wife became disabled and could no longer work. Unable to keep up with his accrued debts on his own income, he let his debts become delinquent. Secure in his belief his creditors were no longer pressing him for payment, he has made little effort to date to contact any of them about payment

arrangements. Altogether, Applicant accrued over \$13,000.00 in delinquent debts, of which only the judgment taken against him by creditor 1.a has been satisfied.

On the strength of the evidence presented, the 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).

Many of Applicant's debts became delinquent during a period of tightening finances surrounding his spouse's medical disability and ensuing income loss. For this Applicant is entitled to considerable extenuation credit. Extenuation is but one of the considerations to take into account, however, when appraising security risks associated with a delinquent debt history. Equally significant are the choices the applicant made in addressing his debts when he is financially able to do so. In Applicant's case, he has taken little action to resolve his debt delinquencies and relies on sincerely based but unspecified promises to pay his debts at some point in the future when he is better positioned to deal with them.

Over time, our Appeal Board has shown general consistency in discounting promises to take repayment actions in the future when resources become available. *Cf.* ISCR Case No. 99-0012 (December 1, 1999); ISCR Case No. 98-0188 (April 29, 1999). Put another way, the assumed possibility an applicant might achieve resolution of his outstanding debts at some future date is not a substitute for a worthy track record of remedial actions, or evidence of financial reform or rehabilitation in the present. *Cf.* ISCR Case No. 98-0614 (July 12, 1999). 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). Without any payment documentation or definitive plan to address his still outstanding debts, Applicant lacks the probative mitigation necessary to absolve him of the pressure and judgment risks associated with being in debt.

In recognition of the extenuating circumstances attending his initial debt delinquencies, Applicant may take advantage of MC 3 (conditions largely beyond the person's control) of the Adjudicative Guidelines to extenuate his debt delinquencies. However, 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 his old creditors than he has shown to date. Unfavorable conclusions warrant, accordingly, with respect to subparagraphs 1.b through 1.p as to the allegations governed by the Adjudicative Guidelines governing Guideline F. Only with respect to the allegations in subparagraph 1.a (covering the payoff of his judgment) does Applicant mitigate raised security concerns.

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: AGAINST APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

Sub-para. 1.f: AGAINST APPLICANT

Sub-para. 1.g: AGAINST 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

Sub-para. 1.o: AGAINST APPLICANT

Sub-para. 1.p: 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