

DATE: October 13, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-14476

## **DECISION OF ADMINISTRATIVE JUDGE**

**ROGER C. WESLEY**

### **APPEARANCES**

**FOR GOVERNMENT**

Marc E. Curry, Department Counsel

### **SYNOPSIS**

Applicant has a history of delinquent debts (mostly business-related) he incurred between 1994 and 2002. The debts total over \$34,000.00 and still remain largely unaddressed. While Applicant is to be encouraged in seeking compromise repayment arrangements in the past year, his repayment efforts remain too much a work in progress to make any safe predictable judgments at this time about his debt resolution prospects. Applicant fails to mitigate security concerns associated with his delinquent debts. Clearance is denied.

### **STATEMENT OF THE CASE**

On July 17, 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 August 14, 2003, and elected to have his case decided on the basis of the written record. Applicant was furnished the File of Relevant Material (FORM) on January 19, 2004, and received it on January 28, 2004. Applicant responded to the FORM within the 30 days provided him with supplemental documentation regarding his finances. The case was assigned to me March 12, 2004.

### **SUMMARY OF PLEADINGS**

Under Guideline F, Applicant is alleged to have accumulated a number of delinquent debts, some resulting in judgments, a federal tax lien and a several bankruptcy petitions over an eight year period spanning 1994 and 2002: two debts exceeding \$2,900.00, six judgments totaling in excess of \$27,000.00, a federal tax lien in the approximate amount of \$7,213.00, and three bankruptcy petitions that were ultimately dismissed for failure to appear (on a November 1998 Chapter 7 petition) and failure to make payments (on respective Chapter 13 petitions in September 1996 and October 1994). For his answer to the SOR, Applicant admitted most of the allegations. He denied having a federal tax lien, claiming it was satisfied and released. Applicant claimed his priority to be getting an offer in compromise approved with his tax creditors, and then to try and resolve several of his other creditors.

## FINDINGS OF FACT

Applicant is a 36-year-old machinist 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.

Beginning in 1994, Applicant joined his father as a partner in the former's machine and tool business. Together, Applicant and his father purchased expensive equipment, and Applicant assumed major responsibility for the management of the business's daily operations. By June 1994, the business had deteriorated considerably, and Applicant's father filed for Chapter 13 protection. Unable to keep the business financed in the face of his father's Chapter 13 filing, Applicant himself filed for Chapter 13 protection in September 1994.

For the ensuing two years following their chapter 13 petitions, Applicant continued to operate their business and met their required Chapter 13 obligations. When Applicant and his father could no longer keep up with the company's incurred debt obligations, both of their Chapter petitions were dismissed in May 1996. Applicant's father immediately filed for Chapter 7 relief (in May 1996).

Applicant continued to struggle to keep the business operating, even after his father had filed for Chapter 7 relief. But with debts mounting and the loss of a major contract, Applicant shut down all business operations of the family business in December 1997. A year later (in November 1998), Applicant himself filed for Chapter 7 relief, claiming debts of \$128,880.00 on scheduled assets of \$171,036.45. When he failed to appear for a scheduled bankruptcy hearing in February 1999, Applicant's Chapter 7 petition was dismissed.

Applicant's delinquent debts with creditors 1.a and 1.b, totaling in excess of \$2,900.00, have not been paid, or otherwise resolved, to date. Six of his creditors have reduced their claims to judgment. Altogether, Applicant's judgment creditors (covered by creditors 1.c through 1.h) hold judgments in excess of \$27,000. Additionally, the IRS has a recorded \$7,213.00 federal tax lien against him. While Applicant claims to have obtained a release of this lien, he provides no documentation of a satisfaction and release.

For the first two years of his employment with his most recent defense contractor, Applicant reported a net monthly remainder of \$926.00 a month. Despite these available resources, he made no tangible effort during this period to pay on his delinquent debts. While he claims to have several compromise offers pending, he has yet to finalize any that he can document in the record.

Applicant provides no plan of repayment or resolution of his outstanding debts and remains indebted to his listed creditors on each of the listed debts in the SOR.

## 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.

## **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 1994 and 1997, most of it business-related. Unable to satisfy his debts, he filed a series of bankruptcy petitions over a five-year period spanning 1994 to 1999. Each of these bankruptcy petitions were dismissed, and Applicant continues to be responsible for an accumulation of delinquent debts and judgments totaling in excess of \$30,000.00. This accumulation of unresolved debt raises continuing security concerns for the Government.

Despite his more recent efforts to pay off and compromise his old debts, Applicant remains obligated to all but one of the creditors listed in the SOR. On this record, two of the Disqualifying Conditions (DC) of the Adjudicative Guidelines for financial considerations 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 extenuating circumstances (*viz.*, his business-related bankruptcy petitions), for the most part his finances have permitted modest attempts to pay on his old creditors with the resources available to him before his recent loss of his interim clearance and related job. So, while his debts are extenuated enough to enable him to invoke MC 3 (conditions largely beyond the person's control) of the Guideline, he must demonstrate mitigation as well to absolve himself of risks associated with past financial difficulties.

Applicant's debts are not sufficiently mitigated to enable him to take advantage of any of the mitigating conditions at this time. His debt accumulations attributable to the family business he and his father endeavored to save have never been satisfactorily addressed since his series of failed bankruptcy attempts. His repayment efforts remain a work in progress and insufficient at this time to invoke any of the mitigating conditions of the Guidelines, 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 (as here) 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).

Applicant's claims of satisfying his federal tax lien and contacting his creditors with compromise offers, he provides no documentation of either his payment/compromise efforts or viable repayment plan with his current resources. 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 claimed recent efforts in addressing his debts, unfavorable conclusions warrant with respect to subparagraphs 1.a through 1.m of the allegations governed by the Adjudicative Guidelines pertinent to Guideline F.

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: AGAINST 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

**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