

KEYWORD: Financial

DIGEST: Applicant has a history of delinquent debts he and his spouse incurred in 1997 and 1998. They total over \$17,000.00 and to date have scarcely been addressed (save for payment of two small debts and some reduction in his largest creditor). While Applicant is to be encouraged in identifying and contacting his creditors 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 extenuate or mitigate security concerns associated with his delinquent debts. Clearance is denied.

CASENO: 02-14433.h1

DATE: 08/04/2004

DATE: August 4, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-14433

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of delinquent debts he and his spouse incurred in 1997 and 1998. They total over \$17,000.00 and to date have scarcely been addressed (save for payment of two small debts and some reduction in his largest creditor). While Applicant is to be encouraged in identifying and contacting his creditors 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 extenuate or mitigate security concerns associated with his delinquent debts. Clearance is denied.

STATEMENT OF CASE

On October 30, 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 November 19, 2003, and requested a hearing. The case was assigned to me on May 10, 2004, and was scheduled for hearing on June 3, 2004. A hearing was convened on June 3, 2004, for the purpose of considering whether it is 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 one witness (himself) and three exhibits. The transcript (R.T.) of the proceedings was received June 14, 2004.

SUMMARY OF PLEADINGS

Under Guideline F, Applicant is alleged to have incurred six delinquent debts totaling in excess of \$17,000.00 that had not been resolved by May 2003.

For his answer to the SOR, Applicant admitted most of the allegations, denying only his alleged debts to creditors 1.b and 1.c, which he claims were erroneously attributed to him in his credit report. As for the four other debts allegedly belonging to him, Applicant claims contact with the creditors and payment arrangements with most of them. Applicant claims extenuating circumstances are responsible for his debts becoming delinquent: lack of spousal support while she was attending school to obtain a license for nail care.

FINDINGS OF FACT

Applicant is a 46-year-old computer programmer 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 and adopted as relevant and material findings. Additional findings follow.

While still in the USAF (AF), Applicant became involved with a direct retail marketing organization in late 1996 and incurred financial setbacks as a result. At the time of his foray into direct marketing his finances were stable. Beginning around the middle of 1997 he began experiencing financial pressures from income losses associated with his direct marketing work. Each of the covered debts in the SOR represents business-related debts associated with his direct marketing experiences. He considered bankruptcy then as a means of resolving his debts. He went so far as to file a bankruptcy petition, but decided against this course of action and dismissed his petition (R.T., at 97).

After retiring from the AF in late 1997, Applicant moved to his current locale and tried low paying jobs initially to keep his family housed and fed while he sought higher paying positions. The income he generated for the years spanning 1998 through 2000 were much less than what he had been accustomed to earning on active duty. As a result, he fell behind with a number of his consumer debts. Each of the covered debts in the SOR represent debts associated with reductions in his personal disposable income attributable to his direct marketing experience and the absence of reliable paying work during the first few years of his AF retirement.

When interviewed by DSS in March 2002, Applicant had still not repaid any of his delinquent debts incurred during the last year of his AF active duty and initial years of his post-retirement. At this time, his monthly remainder was still a net minus. Still, he pledged to contact his creditors in the hope of making arrangements to pay them (*see ex. 2*). Since

March 2002 he has paid creditors 1.b and 1.c (*see* ex. 3). His creditor 1.c debt shows both a zero balance and \$120.00 owing on his credit report (ex. 3). Applicant's disputes the amount shown on the credit report as owing for this creditor (R.T., at 35-36). While he cannot provide any documentation of payment of this debt, the reported zero balance in the credit report for this debt makes his payment claims plausible. As to his creditor 1.c debt he is credited with satisfying it.

Applicant is married with three children. Two live with him, while his oldest daughter is away in college. Applicant currently earns around \$42,000.00 from his job and \$15,000.00 from his military retirement, for a total of about \$57,000.00 a year. His wife's income varies between \$1,000.00 and \$2,000.00 a month.

Applicant has three credit card accounts that are reflected as debts owing to creditors 1.d through 1.f. All three of these accounts (totaling in excess of \$6,200.00) are treated by the common creditor as one account that has been delinquent since at least 1998. Applicant paid some on these respective accounts that he is able to document but still owes more than \$7,000.00 on the debts combined (*see* exs. A and B).

While Applicant would like to pay his debts to creditor 1.a and creditor 1.d-1f within the year, the only way he envisions being able to do so is to buy a house and take out an equity loan or obtain a student loan (R.T., at 68). He has not been able to work out payment plans with any of his remaining creditors. Applicant has applied for a Sally-Mae guaranteed student loan to subsidize the costs of his daughter's education. He hopes to be able to use some of his anticipated student loan proceeds to pay on his old debts instead of his schooling obligations (R.T., at 68-69). However, he is unable to demonstrate how he could realistically expect to receive the loan proceeds directly (bypassing the school), and how it would even be legal to apply student loan proceeds to non-school related debts (R.T., at 80-83).

Applicant's only other viable repayment option is to obtain a home equity loan. But to do so, he would first need to finance the purchase of a home, which he is currently unable to do with his current resources (R.T., at 83-85). He is exploring credit counseling, too, but has made no counseling arrangements to date.

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 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 good-faith efforts 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 and his spouse accrued considerable delinquent debt in 1997 and 1998. Most of the debt was credit-card related and altogether exceeded \$17,000.00. The Government's security concerns center on the amount of delinquent debt he compiled between 1997 and 1998, which he has been unable to substantially repay.

Despite his past efforts to seek bankruptcy and more recently identify his creditors holding his delinquent accounts, Applicant remains obligated to his creditors, save for a few payments he has tendered creditor 1.a and his payments of the small debts owned by creditors 1.b and 1.c, respectively. 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 some extenuating circumstances (*viz.*, lack of high paying work

after his discharge from the AF in 1997), for the most part his finances have permitted modest attempts to pay on his old creditors with the resources available to Applicant and his spouse since 2003.

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 combined income is sufficient to enable him to address his old debts, either directly or through arranged financing. Extenuation is not demonstrated sufficiently to invoke C 3 (conditions largely beyond the person's control) of the Guideline. While he has paid two of the debts and made a payment on a third one, his overall 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 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).

To Applicant's credit, he has since taken steps to identify his creditors and accept responsibility for some of his debts. At the same time, he provides no viable repayment plan with his current resources. His suggested best hope is obtaining the student loan he has applied for in connection with his daughter's schooling and applying some of the proceeds towards his debts. It is doubtful, at best, though that he could ever obtain the lender's permission to appropriate student loan funds to pay his personal debts. Applicant's hopes of pursuing this course of action to repay his debts is not a realistic one, and perhaps even illegal. And his efforts are not of sufficient strength at this time, however, 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 identifying and addressing his debts, unfavorable conclusions warrant with respect to subparagraphs 1.a, 1.d, 1.e, and 1.f of the allegations governed by the Adjudicative Guidelines pertinent to Guideline F. Favorable conclusions warrant with respect to subparagraphs 1.b and 1.c. of the allegations covered by 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: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

Sub-para. 1.f: 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