

DATE: December 30, 2002

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-14950

**DECISION OF ADMINISTRATIVE JUDGE**

**ROGER C. WESLEY**

**APPEARANCES**

**FOR GOVERNMENT**

Katherine A. Trowbridge, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of delinquent debts accumulated during periods of unemployment and underemployment attributable to whistle blower efforts with his defense contractor. While most of his old debts languished under extenuating circumstances, they have not been mitigated through demonstrated efforts to either pay them down, consolidate them, or seek bankruptcy or Chapter 13 relief. As such, Applicant fails to absolve himself of security risks associated with unresolved debts and unwillingness to address them through the variety of options available to him. Clearance is denied.

**STATEMENT OF THE CASE**

June 27, 2002, 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 July 15, 2002, and requested a hearing. The case was assigned to this Administrative Judge on September 15, 2002, and was scheduled for hearing on October 9, 2002. A hearing was convened on October 9, 2002, 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 seven exhibits; Applicant relied on one witness (himself) and nine exhibits. The transcript (R.T.) of the proceedings was received on October 17, 2002.

**STATEMENT OF FACTS**

Applicant is a 54-year old senior subcontract administrator for a defense contractor (Company A) who seeks a security

clearance.

## Summary of Allegations and Responses

Applicant is alleged to have incurred numerous delinquent debts between 1995 and 2000: Specifically, he is alleged to have incurred eighteen delinquent debts, which exceed \$85,000.00 in the aggregate. Applicant is alleged to have a personal financial statement of October 2000 that evidences a monthly remainder of \$1,012.00. Allegedly, Applicant will take no action to resolve his debts, since his credit is already ruined and he is waiting for pertinent statutes of limitations to run on his delinquent debts.

For his answer to the SOR, Applicant admitted to all but two of his listed debts: debts to creditors e (for \$4,615.00) and g (for \$5,430.00). He claimed to have uncovered fraudulent billing on a Navy contract by his prior employer and reported his findings to the Navy and FBI. He claimed his reporting prompted his being asked by his employer to resign, albeit without any work prospects at the time.

Applicant claimed to have been later forced to terminate his job in State B in 1996, so that he could move back home to State A to be with his 17-year old son who had developed a hard drug habit. With the loss of income he experienced after moving home in 1996 and finding no good paying work, he claimed he could no longer pay on his debts and began using his credit cards to finance the maintenance and repair of his rental property. He claimed his efforts to work out repayment arrangements with his creditors were rebuffed. Attributing his work troubles to be the result of his being a "whistle blower" with his old company, he claimed his old debts have since become barred by pertinent statutes of limitations. Shunned by prospective defense employers in the close knit defense contractor community, he provided no new repayment intentions.

## 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.

Applicant comes to these proceedings with over 20 years of Air Force military training and experience holding a security clearance. During his tenure in the Air Force and in subsequent contracting positions in the private sector, Applicant acquired considerable experience in government contracts, which he has put to productive use with his various defense contractor employers (including his present Company B).

By his wife of 24 years, Applicant has one natural son (now 23 years of age and attending college) as well as an adopted child. Applicant was unemployed for several months following his dismissal by Company B in August 1995. Since losing his high paying job with Company B, Applicant has had all he could do just to keep up with his current obligations, which includes caring for a rental house in State B, in addition to paying the mortgage on his principal residence.

Concerned about his mounting debts, Applicant considered filing bankruptcy in July 1996, but was advised by an attorney that he need not do it if creditors weren't pressing him. The same attorney also advised him that if he were to seek Chapter 7 bankruptcy protection, he would have had to fold into the bankruptcy his wife's assets (including her business, which he was reluctant to do). During this 1996 time frame, he was able to work out a settlement with the IRS on the \$30,000.00 in back taxes he owed the Service for tax years 1995 and 1996. Under his agreement with the IRS (*see ex. 5*), he obligated himself to pay \$250.00 a month. To date, he has been able to keep current with his agreed monthly payments to the IRS (R.T., at 68-69). However, he still owes almost \$30,000.00 in back taxes.

Since August 1999, Applicant has worked for three different employers: One went out of business after only six months in its employ; while another also went out of business. With Company A (his current employer), he has received numerous awards for performance excellence. He has also received a recent \$400.00 monthly pay raise, which brings his monthly take home pay to around \$1,800.00 (*see R.T.*, at 106-07). Applicant's assets now total in excess of \$200,000.00, which includes the equity in his home

All of Applicant's old debts (save for his tax debts, which are covered by a repayment agreement) are now barred by

pertinent statutes of limitations and create no identifiable vulnerability to financial pressure in the judgment of Applicant. Most of these old debts will no longer be reflected in his credit bureau report (CBR) by Summer 2003. Applicant's current debts are completely up to date and are payed as agreed.

Besides Chapter 7 petitioning, Applicant also considered Chapter 13 wage earners' relief in 1996, but elected not to pursue this route. During the same time frame, he also considered debt consolidation before ultimately electing not to do so. A major consideration in his not pursuing either Chapter 13 relief or debt consolidation was the absence of any visible creditor collection efforts or any anticipated need for a security clearance. While his clearance situation has changed, his decision to avoid either Chapter 7 bankruptcy, Chapter 13 relief, or debt consolidation has not.

Currently, Applicant has two open credit card accounts, which he opened in the hope of reestablishing his credit. He recently discovered he could likely obtain settlements with his creditors on a discounted 25 per cent basis, but has not taken any concrete steps towards securing any creditor accords. He continues to rely on pertinent statutes of limitations to bar collection enforcement on his old debts, and he looks to have all his listed delinquent debts removed from his CBR after seven years (which will expire Summer 2003).

Applicant attributes his debt troubles to his continued lack of income and the emotional scars from his Company B dismissal in 1995. He has received no financial help from his wife towards the payment of his old debts (mostly joint incurred) and can offer no repayment plan at this time to address his old debts (save for his current repayment plan with the IRS).

### **POLICIES**

The Adjudicative Guidelines of the Directive (Change 4) lists "binding" policy considerations to be made by Judges in the decision making process covering DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board, requires 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 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 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 reason 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 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 Statement of Reasons and (2) it must demonstrate that the facts proven have a nexus to the applicant's eligibility to obtain or maintain a security clearance. The required showing of nexus, 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 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.

### **CONCLUSIONS**

Applicant accrued considerable debt, much of it credit card-related, following his loss of his good-paying defense contractor position in 1995. Finding difficulty in locating comparable high paying work in the defense contractor community (a problem he attributes to his whistle blower actions with his former employer, Company B), he came to rely on credit cards to meet his housing and other family necessities. Altogether, Applicant accrued over \$85,000.00 on delinquent debt, much of it covered by \$30,000.00 in back taxes owed the IRS. 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 2 (inability or unwillingness to satisfy debts).

While Applicant's credit card, back tax and other debts are understandable and extenuated, considering the financial predicament he found himself in between 1995 and 2000, his explanations for failing to later tend to these debts are not. Once Applicant's creditors rebuffed his past attempts to work out modest repayment arrangements with the resources he had at his disposal, Applicant still had several options to turn to: debt consolidation, Chapter 13 relief, counseling, and even exploration with the same creditors about more substantial repayment arrangements, with the added net remainder he had acquired from his raises at work. Applicant chose none of these options, and continues to rely exclusively on pertinent statutes of limitations (save for his repayment arrangement with the IRS) to forestall creditor enforcement and ultimately remove his old debts from credit reporting. As a result, he cannot be credited with the mitigation necessary to absolve him of the pressure and judgment risks associated with being in debt.

So, while Applicant may take advantage of MC 3 (conditions largely beyond the person's control) of the Adjudicative Guidelines to extenuate his debt delinquencies, 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 reliance on pertinent statutes of limitations and anticipated removal of his listed debts from credit reports.

To find insufficient mitigation of Applicant's accrued delinquent debts is not to minimize the personal risk Applicant exposed himself to in his reporting of contract fraud against the Government during his tenure with Company B. For these efforts, Applicant merits acknowledgment and commendation. His whistle blowing efforts are not enough, however, to absolve him of the financial risks associated with his outstanding debt delinquencies. Unfavorable conclusions warrant, accordingly, with respect to sub-paragraphs 1.a and 1.c through 1.s of the Adjudicative Guidelines governing financial considerations.

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: FOR 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.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

Sub-para. 1.q: AGAINST APPLICANT

Sub-para. 1.r: AGAINST APPLICANT

Sub-para. 1.s: 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