

DATE: February 10, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-15829

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Deputy Chief Department Counsel

FOR APPLICANT

Conswella L. Edwards, Esq.

SYNOPSIS

Applicant has a history of delinquent debts that he has failed to address, but instead relied on the expiration of the lawful period for credit reporting delinquent and charged off debts. Reliance on the absence of any enforcement authority due to the passage of time is insufficient to represent the kind of good-faith repayment efforts necessary to mitigate his financial problems. Security concerns over his financial history are compounded by his falsification of his security clearance application (SF-86), which he failed to mitigate by any prompt, good-faith correction in his ensuing DSS interview. Clearance is denied.

STATEMENT OF THE CASE

On August 27, 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 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 September 25, 2003, and requested a hearing. The case was assigned to me on November 17, 2003, and was scheduled for hearing on December 17, 2003. A hearing was convened on December 17, 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 three exhibits; Applicant relied on two witnesses (including himself) and no exhibits. The transcript (R.T.) was received on December 29, 2003.

SUMMARY OF PLEADINGS

Under Guideline F, Applicant is alleged to have nine delinquent debts, which exceed \$17,000.00 in total. Under Guideline E, he is alleged to have falsified his SF-86 of June 14, 2001, by omitting his debts covered by subparagraphs

2.a, 2.c, 2.d, 2.f, 2.h, 2.i, and 2.j of the SOR, when responding to question 39 of his SF-86.

For his answer to the SOR, Applicant admitted each of the allegations. He claimed the listed bad debts were acquired by both himself and his ex-wife; although, he was not aware of some of the accounts. Applicant claimed he closed the accounts while he was waiting for the 7-year grace period to elapse. He claimed he has acquired no major debt, has kept his current bills paid, and has learned his lesson.

STATEMENT OF FACTS

Applicant is a 43-year-old electrical installer 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.

Applicant enlisted in the Navy in 1978 and served honorably for 20 years before retiring in November 1998 as a petty officer first class with 20 years of active service (*see ex. 1*). While in the Navy, Applicant and his wife (W1) incurred a number of consumer debts, which Applicant encountered difficulty in repaying. As his marriage began to deteriorate, W1 went on disability and quit her job. However, she continued to shop and accrue debts. With their limited income, and W1's unwillingness to join him on reassignment to another state, Applicant separated from W1 and divorced her in February 1998. As a part of their separation, W was awarded their automobile. When he relocated, he made not effort to notify his creditors of his new address and never received any further billings from them.

Other than the new home and truck he has financed with his new wife (W2), Applicant has incurred no new major debts and is current on his other accounts. In addition to a \$2,500.00 savings account, he has a 401(k) retirement account worth around \$25,000.00.

With the exception of the delinquent debt covered by creditor 1.e, Applicant admits all of the listed debts are debts he incurred during his marriage to W1 and remains legally responsible for. The creditor 1.e debt is reflected on his creditor's report (*ex. 3*) as a credit card account opened in November 1998, seven months after his divorce was finalized, and an account that was not opened by himself (R.T., at 30-31). He acknowledges another credit card account with the same creditor that is also reflected in his credit report (also shown as a charged off debt with a balance of \$5,031.00). This second account is reported as an account opened in 1993. Applicant's claims that this covered debt in the SOR is not the one he opened is accepted. In its place as a delinquent debt for which he acknowledges responsibility is the reported charged off debt with the same creditor in the amount of \$5,031.00 (*ex. 2*; R.T., at 31-32). While this is technically a different debt it is a delinquent debt with the same creditor and may be substituted under the SOR without a formal leave to amend.

In the past, Applicant has indicated no intent to pay off his old charged off debts (*see ex. 2*). While he expressed some uncertainty about some of the charged off debts attributable to him, he admitted responsibility for all of them in his March 2002 DSS statement after being showed his credit report (*ex. 2*). He admits to making no attempt to pay any of his charged off debts, or to let his creditors know of his relocation. Impressed that once the creditor charges off a debt, the debt is extinguished, he was content simply with letting the 7-year period on reporting charged off debts in his credit report expire without any action on his part. While both he and W2 assure at hearing he was mistaken about his understanding of his debts and will now try to work out repayment arrangements with his charged off creditors, they provide no convincing reasons why Applicant has changed his mind (R.T., at 35, 41, 56-57, 73). Based on his actions and statements to date about his old debts, he has shown too little prior interest in addressing his old debts to warrant inferences he will undertake future repayment actions on these accounts in the foreseeable future. Not only has he avoided any direct contact with his creditors, but he has failed to date to enlist any credit counseling service to aid him in working out repayment arrangements, either individually, or through a debt consolidation program.

Asked to complete an SF-86 in June 2001, Applicant answered in the negative to having any debts currently over 90 days delinquent. He attributes his misstatement to his belief that the question was not asking about charged off debts, only current debts over 90 days delinquent. Applicant acknowledges, though, he made no attempt to secure his credit report before completing his SF-86. Applicant answered in the negative when responding to question 34 of his SF-86 (inquiring about wage garnishments). While Applicant admits to a wage garnishment, he is certain no garnishment

actions were taken before July 2001 (R.T., at 52-53). Without any evidence of pre-July 2001 garnishment actions, no adverse inference can be drawn here of any deliberate omission of garnishments covered by question 34. However, Applicant's explanations for omitting his charged off debts when responding to question 39 of his SF-86 cannot be accepted as a good-faith mistake based on his own knowledge and understanding of his debts and the question in his SF-86 that asked about them. Inferences warrant, accordingly, that Applicant's omissions of his listed debt delinquencies were made knowingly and wilfully.

Applicant did not come forward to disclose his delinquent debts until confronted with the same by the interviewing DSS agent in an interview conducted in arch 2002.

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).

Personal Conduct

The Concern: 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, or falsification 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: None

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 Statement of Reasons 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 debt, much of it consumer-related, while in the Navy. Unable to stay up with his accrued debts with his limited work following his first wife's quitting her job and going on disability, he was content to let his debts become delinquent. To date, he has never made any tangible efforts to pursue repayment arrangements, either collectively through debt consolidation organizations, or individually that he can document.

Altogether, Applicant and his former wife accrued over \$17,000.00 in delinquent debt, much of it covered by defaulted credit cards and consumer loans. Most of these listed debts were charged off by Applicant's respective creditors holding these accounts. Applicant has not to date shown any probative commitment to addressing any of these debts, preferring instead to let the 7-year grace periods on credit company reporting of debts run their course and rely on his mistaken assumption his charged off debts were no longer viable debts he need be concerned about. 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 3 (inability or unwillingness to satisfy debts).

While some of Applicant's debt delinquencies are attributable to his loss of his first wife's income amidst extenuating circumstances (as a result of her disability and subsequent job termination and spousal separation), his explanations for failing to later tend to these debts when financially able are not. Making no tangible attempts to work out repayment arrangements with his creditors and relying instead on letting the 7-year grace period for credit reporting expire does not constitute good-faith efforts to pay or otherwise resolve his debt charge offs. Nor do undocumented promises to address old debts in the future represent tangible good-faith attempts to take care of an applicant's delinquent debts.

Over time, our Appeal Board has shown general consistency in disallowing undocumented general applicant intention to repay old debts at some uncertain future date when resources become available. *Cf.* ISCR Case No. 01-17474 (March 7, 2003); ISCR Case No. 01-13653 (March 7, 2003); ISCR Case No. 01-12147 (January 21, 2003). So, too, an applicant's reliance on the expiration of covered periods of credit reporting and statutes of limitation does not represent the kind of good-faith repayment efforts contemplated by MC 6 (initiated good-faith efforts to repay overdue creditors). In ISCR Case No. 02-32606 (January 21, 2004), our Appeal Board distinguished good-faith efforts to repay overdue creditors (the MC 6 standard) from situations where an applicant avoids paying his debts until they are uncollectible because the statute of limitations has run. Noting that reliance on a statute of limitation (or in Applicant's case his waiting for the 7-year period of reporting bad debts to expire) would be a legally permissible course of action to avert collection actions, the Appeal Board squarely held that such a course of action would not satisfy the good-faith repayment criterion of MC 6. The situation is no different in Applicant's case. His reliance on the absence of any collection enforcement action to date by his creditors, while perhaps an effective way to clear his credit report of these charged off accounts, is insufficient to demonstrate any good-faith efforts to resolve his debts.

Security clearance decisions are, of course, never an exact science, but rather involve predictive judgments about a person's security eligibility based on the evidence presented. Without any payment documentation of repayment efforts, Applicant lacks the probative mitigation necessary to absolve him of the pressure and judgment risks associated with being in debt. *See Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). So, while Applicant may take advantage of MC 3 (conditions largely beyond the person's control) of the Adjudicative Guidelines to extenuate some of his debt delinquencies, he may not invoke the mitigating provisions of MC 6 (initiated good-faith effort to repay overdue creditors), absent more concerted efforts to address his old creditors to date. Unfavorable conclusions warrant, accordingly, with respect to subparagraphs 2.a through 2.i of the Adjudicative Guidelines governing financial considerations.

Posing security concerns, too, are Applicant's falsification of his March 2001 SF-86 by omitting his listed delinquent debts when responding to question 39. Found to have knowingly and wilfully omitted his debts, his falsification conduct falls under DC 2 (The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire) of the Guideline for personal conduct. Not until he was confronted with his debts by an interviewing DSS agent almost nine months later did he correct his omissions. His correction do not, as such, reflect prompt, good-faith corrections of his previous omissions in accordance with the standards framed by our Appeal Board and do not permit him to mitigate his deliberate omissions under the facts developed here. Unfavorable conclusions warrant with respect to subparagraph 1.a of the allegations governing personal conduct.

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 E (PERSONAL CONDUCT): AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

GUIDELINE F (FINANCIAL): AGAINST APPLICANT

Sub-para. 2.a: AGAINST APPLICANT

Sub-para. 2.b: AGAINST APPLICANT

Sub-para. 2.c: AGAINST APPLICANT

Sub-para. 2.d: AGAINST APPLICANT

Sub-para. 2.e: AGAINST APPLICANT

Sub-para. 2.f: AGAINST APPLICANT

Sub-para. 2.g: AGAINST APPLICANT

Sub-para. 2.h: AGAINST APPLICANT

Sub-para. 2.i: 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