

DATE: January 16, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-20602

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, who with his wife had historically relied on their two income family income to sustain their finances and good credit, encountered severe set backs associated with his own work layoffs and his wife's disability. Since returning to permanent work with his current defense contractor, Applicant has made considerable good-faith efforts to address his listed debts and has documented repayment plans with all but three of his listed creditors. Of these latter three creditors, two are documented to have been paid; while the other is a documented duplicate. Applicant is highly regarded by his employer and through demonstrated extenuation and mitigation absolves himself of risks associated with financial problems. Clearance is granted.

STATEMENT OF THE CASE

On July 23, 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 September 2, 2003, and requested a hearing. The case was assigned to me on September 17, 2003. Pursuant to notice, a hearing was convened on November 5, 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 11 exhibits. The transcript (R.T.) of the proceedings was received on November 20, 2003.

PROCEDURAL ISSUES

Before the close of the hearing, Applicant requested leave to supplement the record with additional payment

documentation and request for his updated credit report. There being no objections from Deputy Chief Department Counsel, and good cause being shown, Applicant was afforded an additional 10 days to supplement the record. The Government, in turn, was afforded 2 days in which to respond. Within the time provided, Applicant supplemented the record with a cover letter, a copy of a money order made payable to creditor b in the amount of \$132.00, and letter to a credit reporting company requesting a copy of his credit report. The three submissions are accepted without objection as Applicant's exhibit M.

SUMMARY OF PLEADINGS

Under Guideline F, Applicant is alleged to have a history of financial difficulties: Eight delinquent, charged off debts totaling in excess of \$16,000.00.

For his answer to the SOR, Applicant admitted all but two of his listed debts, denying delinquent debts owed to creditor 1.e (paid off) or 1.g (a duplicate debt covered by creditor 1.a). Applicant claimed several explanations regarding his listed delinquent accounts in his answer. He claimed extenuating circumstances attributable to layoff and the absence of medical benefits during his temporary employments, which compounded his financial difficulties when his wife was involved in an auto accident that required multiple surgeries. He claimed to have resumed payment on his old debts during the remainder of 2001, throughout 2002, and into 2003, while employed full time for his current defense contractor.

STATEMENT OF FACTS

Applicant is a 40-year old custom support engineer for a defense contractor who seeks a security clearance. The SOR allegations admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Before his wife's auto accident and her ensuing layoff in 2001, Applicant and his wife (W) enjoyed good credit and were punctual about paying their bills. But in August 1998, W was involved in a serious automobile accident with an uninsured motorist. The head and facial injuries she incurred required three reconstruction surgeries in 2001 and 2002. Following the second surgery, W was placed on full time disability and was unable to return to work. Beginning around January 2002, she began receiving \$1000.00 a month for her disability from Social Security. While their medical insurance covered most of her medical expenses (totaling around \$250,000.00), when the insurance was exhausted they were forced to pay W's medical debts (about \$10,000.00 in all) out of their own funds.

After changing jobs himself for more money in May 2000, Applicant's new company shut down its local operations and Applicant was out of a job in August 2000. Relying on a temporary retail sales job to meet their necessary expenses while he looked for permanent work, Applicant's income dropped precipitously. He worked this job and another temporary job until December 2001 when he obtained a career position with his current employer. During this three-year period of drastically reduced income (his own compounded by the loss of his wife's income), Applicant and W struggled to make ends meet for themselves and their two children. While both considered bankruptcy, their bank, friends, and own pride persuaded them not to petition. Since going to work for his current employer, Applicant has been paying on his old debts, a practice he initiated even before he received the SOR. To free up even more money to pay their debts, Applicant and his wife sold their home.

Of the listed debts in the SOR, Applicant has satisfied one of the accounts (creditor 1.e) in full (*see* ex. I; R.T., at 37-38, 69). He has worked out payment arrangements with creditor 1.a in September 2003 that provides for a payment schedule that began with an initial \$100.00 payment, escalated to \$349.97 monthly payments, and closed with a balloon payment of \$699.00. Applicant has made two \$100 payments so far and has reduced the balance to around \$1,700.00 (*see* ex. C; R.T., at 61-62). He hopes to obtain a revised payment schedule from this creditor, however, to avoid paying the \$699.00 installment due in January 2004 and secure creditor approval to make \$200.00 a month payments, a level which he can safely maintain within the budget constraints he has established with his creditors. As to his creditor 1.b and 1.c accounts, he has worked out repayment arrangements with this common creditor as well. On the \$930.00 settlement he reached with this creditor on its 1.b account, he has made two payments to date of \$132.00 a month (*see* ex. E; R.T., at 65-68). His accord with this creditor on its 1.c account was for \$415.00, payable in \$100.00 monthly

installments. On this account, he has made two monthly payments to date.

Applicant has worked out settlement arrangements with creditor 1.d as well. This settlement arrangement calls for 19 monthly payments of \$100.00 on an agreed total of \$2,537.37, with payments to commence in September 2003 (*see ex. F; R.T., at 69*). The payment plan he worked out with creditor 1.f in September 2003 provides for monthly payments of \$123.00 on an agreed \$2,628.25 balance, with payments to begin in October 2003 (*see ex. G; R.T., at 70*). The delinquent account associated with creditor 1.g proved to be a duplicate account, which the creditor acknowledged and had removed from Applicant's latest creditor report (*see exs. 3, C and K; R.T., at 44-46*). Applicant's only remaining listed account (creditor 1.h) was paid in the 80s. While it is not reflected on his obtained credit report (ex. K), it does show up on the Government's creditor report of Applicant's finances (ex. 3). Applicant has made unsuccessful attempts to obtain a letter from the creditor showing a zero balance (*see R.T., at 72*).

Applicant is confident he can continue to make his payments under the plans he has worked out with his creditors. Both Applicant and W want to buy another home and need to resolve their debts to be able to do so. His demeanor is sincere, and he provides some seasoning to corroborate his assurances. He and W have two small children to care for and no family support they can look to. Applicant is highly regarded by his supervisor and received excellent performance appraisals. His supervisor considers Applicant to be a consummate professional on who he relies.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list guidelines to be considered by judges in the decision making process covering DOHA cases. Judges must 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 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 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 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 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 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 and his wife accrued considerable delinquent debt as a result of his own layoffs and difficulties in finding permanent work, and the income losses attributable to W's automobile accident and her subsequent layoff in 2001 and placement on disability status. Before experiencing these setbacks, Applicant and his wife were quite punctual in paying their bills and had no problems with their credit or their finances. Disabled as the result of her auto accident in 1997, and laid off herself in 2001, W has been unable to provide the additional family income Applicant and W were so accustomed to with only the small disability checks she now receives. With their limited income and mounting medical debts, Applicant and his wife encountered increased difficulty in satisfying their accumulated credit card debts. Ultimately, their listed debts were charged off (over \$16,000.00 in all).

Applicant's current debts are currently reflected in all but three of the listed creditors. Of these two excepted creditors, one (creditor 1.e) is documented to have been satisfied. Another (creditor 1.g) is documented to be a duplicate of creditor 1.a and has been removed from Applicant's credit reports; while the third (creditor 1.h) was paid years ago and has been removed from one of Applicant's credit reports. All of the remaining listed debts are covered by repayment plans Applicant initiated with his creditors. On the strength of the evidence presented, 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).

Based on Applicant and W's testimony and the documentation they provided, Applicant's covered debts are both extenuated and mitigated by the special circumstances that gave rise to his debt delinquencies and his earnest repayment efforts. While his payment history to date is still quite limited, his sincerity and demonstrated good faith in working out his payment arrangements provide good reason to expect he will be able to follow through on completing his repayment commitments. True, 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). Applicant's documented initial payments on his executed repayment plans represent more than mere promises to take corrective steps in the future, however, and are entitled to credit as credible documented repayment efforts. His extenuation and mitigation efforts warrant the application of several mitigating conditions of the Adjudicative Guidelines for financial considerations: MC 1 (behavior not recent), MC 3 (conditions largely beyond the person's control) and MC 6 (initiated good-faith effort to repay overdue creditors).

Taking into account all of the circumstances surrounding Applicant's accumulated delinquent debts and steps he has taken to correct them, favorable conclusions warrant with respect to the allegations covered by Guideline F.

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): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

Sub-para. 1.d: FOR APPLICANT

Sub-para. 1.e: FOR APPLICANT

Sub-para. 1.f: FOR APPLICANT

Sub-para. 1.g: FOR APPLICANT

Sub-para. 1.h: FOR APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Roger C. Wesley

Administrative Judge