

DATE: March 17, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-20947

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of delinquent debts he accrued during periods of company layoffs which he failed to address after he returned to gainful employment. Without any concrete plan for addressing his debts, he fails to mitigate security concerns associated with his failures to address his delinquent debts. Applicant's deliberate omissions of his delinquent debts from his completed SF-86 are not mitigated either. His omissions raise still further security concerns about Applicant's judgment and reliability. Clearance is denied.

STATEMENT OF THE CASE

On September 11, 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 October 1, 2003, and requested a hearing. The case was assigned to me on November 26, 2003, and was scheduled for hearing on January 7, 2004. A hearing was convened on January 7, 2004, 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 one witness (himself) and one exhibit. The transcript (R.T.) was received on January 13, 2004.

PROCEDURAL ISSUES

Prior to the close of the hearing, the government moved to (a) amend subparagraph 2.b of the SOR to substitute 28.b for 38.b and (b) strike incorporated subparagraph 1.c of subparagraph 2.b of the SOR, for the reason that the covered creditor was not over 90 days delinquent when Applicant completed his SF-86 in November 2000. There being no

objection from Applicant and good cause being demonstrated, the government's motion was granted. Applicant did not change his answer as the result of the government's amendment.

Before the close of the hearing, Applicant asked for leave to keep the record open to afford him the opportunity to supplement the record with documented confirmations from three of his listed creditors that he does not owe them any money. There being no objection from the government, and good cause being shown, Applicant was granted 14 days to supplement the record. The government was, in turn, afforded two days to respond. Applicant timely provided an updated credit report of January 8, 2004, to which the government did not object. The post-hearing submission is accepted as Applicant's exhibit A.

SUMMARY OF PLEADINGS

Under Guideline F, Applicant is alleged to have incurred numerous delinquent debts: He is alleged to have incurred 10 delinquent debts which exceed \$9,400.00 in total. Under Guideline E, Applicant is alleged to have falsified his security clearance application (SF-86) of November 20, 2000 by omitting his delinquent debts over 180 and 90 days delinquent when answering questions 28a and 38b, respectively. Applicant denied each of the allegations in the SOR without comment or explanation.

FINDINGS OF FACT

Applicant is a 61-year-old maintenance technician for a defense contractor who seeks to retain his security clearance.

Applicant who has held a security for many years accumulated numerous delinquent debts after he was laid off in September 1995: first for a three-month period, and again for a four-month period in December 1996 (*see ex. 2; R.T., at 37-38*). Most of these debts involve consumer credit cards that Applicant admits to using and incurring debts. Two of the covered debts relate to medical bills he incurred in 1995 while hospitalized. These two debts are identified as creditor 1.g (for \$385.00) and 1.i (for \$247.00). Applicant denies knowledge of either of these debts. He also denies knowledge of a utility debt to creditor 1.h (for \$495.00). He claims in his DSS statement (*ex. 2*) that each of three debts were listed on his creditor report in error. His most recent creditor report (*ex. A*) seems to corroborate him: None are listed on his January 2004 creditor report. Based on his corroborated accounts, his disclaimers of these three debts are accepted.

Unable to keep up with his old debts on the very limited amount of money his spouse earned from managing the trailer park where they reside (since 1985) during his lay-off, Applicant permitted his accumulated debts (mostly credit card based) to slide during his recurrent periods of lay-off. Once re-employed in April 1997, Applicant's finances began to improve some. Payments on his car and home, though, prevented him from covering any more than his current obligations. Although he continued to be billed by his old creditors at the same trailer park where he had resided for many years, he made no attempt to either pay any of these creditors or contact them about payment arrangements.

Since none of Applicant's old creditors pressed him after he returned from lay-offs, he simply ignored them. In time, they stopped billing him and charged the debts off. At one point, Applicant sought the advice of a bankruptcy attorney over what action (if any) he should take to address his debts. This bankruptcy attorney cautioned against bankruptcy if none of his creditors were actively pursuing him. Other than seeking bankruptcy advice on this one occasion, Applicant has not explored any other payment options (such as debt consolidation or bilateral payment arrangements with his individual creditors).

To date, Applicant has made no payments on any of his listed debts, which (save for the ones attributed to him in error), he does not deny are his. While he assures he can begin making payments on these creditors later this year when his car loan is payed off, he provides no concrete payment plan. He currently grosses about a \$1,300.00 a month; his wife earns about \$600.00 a month from managing the trailer park where they reside (*see ex. 2; R.T., at 48*).

Asked to complete an SF-86 in November 2000, Applicant answered in the negative both to question 28a (inquiring about debts over 180 days delinquent) and question 28b (inquiring about debts over 90 days delinquent). He attributes his omission of his covered delinquent debts to a mistaken, but sincere impression that since his debts had been charged off they were not delinquent in any way. Applicant is not able to creditably explain, however, how his ignoring his debts

and the ensuing charge offs that resulted could ever be considered an exoneration of his debts. His prior discussing of bankruptcy with an attorney is enough to warrant inferences of his awareness of legal measures available to discharge debts by means other than payment. Nothing in his recited consultations can plausibly support an understanding that by waiting out his creditors his debts would cease to be obligations anymore. Applicant could cite to no other discussions with professionals or persons knowledgeable of finances that could have prompted such a mistaken impression.

While knowing and wilful concealment is not to be drawn solely from what reasonable minds could be expected to interpret from questions manifestly clear on their face (as questions 28a and 28b most certainly are), good faith mistakes cannot be accepted at face value either. Applicant makes clear that he has needed his current job and simply initiated protective steps to ensure he keeps his job and security clearance. Taking into account the information known to Applicant when answering questions 28a and 28b of his SF-86 and motivational reasons for wanting to withhold adverse information about his finances, inferences warrant that his omissions of his acknowledged old debts in the SOR were made knowingly and wilfully.

Applicant was interviewed by Agent A of DSS in April 2002. Agent A came to Applicant's interview with a credit report of Applicant's finances. Applicant cannot recollect whether or not he discussed his old debts with Agent A before or after he was shown his credit report by the agent (R.T., at 36, 54). Nothing in Applicant's DSS statement is probative either of whether or he freely volunteered his delinquent debt history before being prompted by the interviewing agent (*compare ex. 2* with R.T., at 54-55). Absent clarity on the timing and circumstances of Applicant's debt disclosures to Agent A, volunteer disclosures cannot be presumed to have been provided by Applicant.

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 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).

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.

DC 5. A pattern of dishonesty or rule violations.

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 credit card-related, during periods of lay-off in 1995 and 1996. Unable to keep up with his accrued debts on his spouse's limited income, he let his debts become delinquent. Advised by a bankruptcy attorney that he would be ill-advised to petition for bankruptcy if his creditors were not pressing him, he did nothing about his delinquent debts. His debts have long since been charged off. Secure in his belief his creditors are no longer interested in collection enforcement, he has made no effort to date to contact any of them about payment arrangements. Altogether, Applicant accrued over \$8,000.00 in delinquent debts which he has neither paid nor otherwise resolved. He is exonerated only as to the three debts he persuaded were not his: creditors 1.g, 1.h and 1.i.

On the strength of the evidence presented, the 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 Applicant's debts can be traced to extenuating circumstances (unemployment), mitigation of security concerns associated with his long delinquent debts even after he returned to gainful employment is lacking. 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 he has shown to date.

Unfavorable conclusions warrant, accordingly, with respect to subparagraphs 1.a through 1.f and 1.j as to the allegations

governed by the Adjudicative Guidelines governing Guideline F. By contrast, favorable conclusions warrant with respect to subparagraphs 1.g through 1.i, which Applicant established were not his debts.

Posing security concerns, too, are Applicant's documented omissions of his covered delinquent debts from the SF-86 he completed in November 2000. His deliberate omissions reflect knowing and wilful falsification of a security clearance application and are covered by DC 2 (deliberate falsification of a personnel security questionnaire) of the Guidelines for personal conduct. Applicant's explanations of his omissions (misreading the question to exclude charged off debts) were not persuasive enough to avert inferences of knowing and wilful omission.

Applicant's SF-86 omission was never promptly and voluntarily corrected by Applicant, and he may not claim the benefit of any of the available mitigating conditions of Guideline E. As a result, security concerns raised in connection with Applicant's judgment and trust lapses associated with his SF-86 are not mitigated and preclude favorable conclusions with respect to subparagraphs 2.a and 2.b of Guideline E.

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 SO 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: FOR APPLICANT

Sub-para. 1.h: FOR APPLICANT

Sub-para. 1.i: FOR APPLICANT

Sub-para. 1.j: AGAINST APPLICANT

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Sub-para. 2.a: AGAINST APPLICANT

Sub-para. 2.b: 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