

DATE: April 21, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-21747

**DECISION OF ADMINISTRATIVE JUDGE**

**ROGER C. WESLEY**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of delinquent debts accumulated during his years in college. While his debts were extenuated some by his youth, his college commitments, and his lack of income as a student, the debts have not since been mitigated through sustained efforts to repay them before his receipt of the SOR. With half of his debts still unresolved and no concrete plan in place to address them, Applicant fails to absolve himself of security risks associated with his still unresolved debts and delayed willingness to address them until the SOR issued. Clearance is denied.

**STATEMENT OF THE CASE**

On July 30, 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, and recommended referral to an administrative judge for determination whether clearance should be granted or continued.

Applicant responded to the SOR on August 25, 2003, and elected to have his case decided on the basis of the written record. Applicant was furnished the File of Relevant Material (FORM) on February 2, 2004. Applicant filed a timely response to the FORM on March 8, 2004. The case was assigned to me March 12, 2004.

**SUMMARY OF PLEADINGS**

Under Guideline F, Applicant is alleged to have accumulated delinquent debts, seven in all, totaling in excess of \$9,000.00, despite a financial statement attached to propounded interrogatories of April 2003 that shows a net remainder of \$130.00 and no payments on the listed debts.

For his response to the SOR, Applicant admitted each of the allegations without any explanation.

## FINDINGS OF FACT

Applicant is a 36-year-old software engineer 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 a college student, Applicant accumulated a number of consumer-related debts: seven in all totaling in excess of \$9,000.00. One of the debts (creditor 1.a) represents a deficiency owed on a car that was repossessed and sold for less than the amount owed on the vehicle, leaving a deficiency of \$4,350.00 as of arch 2003. Another listed debt (creditor 1.c) represents the balance on a personal loan he took out with the lender while a college student. The balance of the debts represent assorted consumer debts.

Following his graduation from college with a degree in engineering, Applicant gained professional employment with his current employer. For the first two years of his employment with his defense contractor, he made no attempt to repay his delinquent creditors.

In a DSS interview in May 2002, Applicant indicated he had ordered his credit report with the intention of repaying his delinquent debts as soon as possible, hopefully by October 2002 (*see ex. 5*). He attached a personal financial statement to his written statement. The financial statement listed his delinquent debts and no payments credited to the debts, despite a reported \$546.00 net monthly remainder.

Applicant responded under oath in May 2003 to propounded interrogatories from DOHA. He acknowledged his delinquent debts, as well as his past failures to work out any payment arrangements with his creditors. Applicant attributed his payment failures to his lack of income to adequately support his household, let alone repay his old debts (*see ex. 9*). In an attached updated personal financial statement he did not list his delinquent debts among the debts he committed to making monthly payments on. He listed a net monthly remainder of just \$130.00 in this updated statement.

Since receiving the SOR, Applicant has worked out payment arrangements with some of the creditors holding his delinquent debts. Among his repayment efforts he documents a settled payment of \$2,000.00 with creditor 1.a. On two of his listed debts (creditors 1.e and 1.f) he claims each is one and the same with the other and documents payment of \$175.00 in full satisfaction of the combined debt (*see ex. 3*). Payment of this debt is accepted as Applicant's payment of the two debts identified in subparagraphs 1.e and 1.f of the SOR. Applicant also documents payment of his disputed debt with creditor 1.g by a check of November 7, 2003 for \$69.00 (*see response to the FORM*).

As for the balance of his listed debts, Applicant claims several failed attempts at resolving his debts with creditors 1.b and 1.c, and documents their removal from his latest credit report. The remaining creditor (creditor 1.d) he assures he has contacted and is currently waiting word of a creditor response that provides him the most current information pertaining to the debt and the balance.

Based on Applicant's FORM response, he has paid or settled four of his eight listed delinquent debts and in doing so has reduced his debt balance to less than one-half of the original delinquent debt accumulation. He remains intent on letting two of the debts (totaling in excess of \$4,200.00) remain charge offs, while he continues to seek more information and creditor willingness to settle his last unresolved account (creditor 1.d).

## 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).

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 accumulated a number of debts during college. Despite his obtaining post-graduation employment with his current defense contractor with the expressed intention of taking care of his old debts he has failed to do so until after the SOR issued. Content with most of his debts being charged off and no longer reported in his credit report, he has failed to pursue them.

While there have been some extenuating circumstances in Applicant's youth that limited his ability to address his debts in the past, he fails to provide any documentation as to why he couldn't have undertaken more concerted efforts to repay his old debts than he has to date. Several of these old debts were quite small and seemingly could have been paid much earlier from the income he derived from his many years of gainful employment. Others might have required repayment plans. Applicant, though, chose to simply ignore the creditors when none of them pursued him. 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).

To his credit, Applicant has initiated recent efforts to settle his debts. Two of his small debts (creditors 1.e and 1.f) represented a single creditor and were paid with Applicant's November 2003 check for \$175. Applicant documents payments as well to creditor 1.g (for \$69.00) and creditor 1.a by a check for \$2,000 in settlement of the account. Settlement prospects remain either closed or uncertain, though, with his remaining creditors (*i.e.*, creditors 1.b through 1.d, representing debts in excess of \$4,000.00).

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). Security clearance decisions are, of course, never an exact science, but rather involve predictive judgments about a person's security eligibility based on his past actions. Without any payment documentation of repayment efforts with half of his old creditors, Applicant lacks the probative demonstration required to mitigate the pressure and judgment risks associated with his being in debt. *See Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988).

So, while Applicant is credited with paying several of his debts (including two which represent the same creditor) and is to be encouraged in his efforts to identify and address one of his unpaid larger creditors (*viz.*, creditor 1.d), his efforts are insufficient to mitigate security concerns associated with his considerable accumulation of delinquent debts over many years of inaction in dealing with them. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.b through 1.d and 1.h. Applicant is credited with mitigating the debts covered by subparagraph 1.a and subparagraphs 1.e through 1.g.

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: FOR APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

Sub-para. 1.e: FOR APPLICANT

Sub-para. 1.f: FOR APPLICANT

Sub-para. 1.g: FOR APPLICANT

Sub-para. 1.h: 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