

DATE: April 23, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-22130

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Rita O'Brien, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of delinquent debts that arose during his marriage and he has been unable to address with the available income sources he has had to work with. Without any material repayment efforts to rely or concrete plan for addressing his debts in the future he is unable to mitigate security risks associated with his continuing debt delinquency problems. Compounding his debt difficulties, Applicant falsified his security clearance application (SF-86) by omitting most of his debts that were 180 and 90 days delinquent, respectively, and failing to correct his omissions until confronted in a DSS interview over five months later. Clearance is denied.

STATEMENT OF CASE

On October 6, 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 26, 2003, and requested a hearing. The case was assigned to me on January 20, 2004, and was scheduled for hearing on February 19, 2004. A hearing was convened as scheduled for the purpose of considering whether it is clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of five exhibits; Applicant relied on one witness (himself) and three exhibits. The transcript (R.T.) of the proceedings was received on March 8, 2004.

PROCEDURAL ISSUES

Before the close of the hearing, Applicant requested leave to supplement the record with documentation of his allocation of the listed creditor 1.a debt to his spouse. There being no objection from Department Counsel, and good cause being

shown, Applicant was granted seven days to supplement the record. Government, in turn, was afforded two days to respond. Within the time permitted, Applicant failed to supplement the record.

SUMMARY OF PLEADINGS

Under Guideline F, Applicant is alleged to have accumulated numerous debts, 11 in all totaling in excess of \$25,000.00, and reported a negative monthly income in his personal financial statement of May 2003.

Under Guideline E, Applicant is alleged to have falsified his security clearance application of September 2001 by omitting (a) his debts over 180 days delinquent, except for creditor 1.e, and (b) his debts over 90 days past due, except for creditor 1.c.

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

FINDINGS OF FACT

Applicant is a 37-year-old electrician 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 adopted as relevant and material findings. Additional findings follow.

During his nine-year marriage to his former spouse (W) spanning 1988 and 1997, Applicant accumulated a number of debts. Since 1997 he has struggled to resolve his debts, but with little success. He was awarded custody of his four children and receives \$600.00 a year in child support from W (R.T., at 36).

Applicant continues to experience tight finances and as a result has little budgeting room to accommodate payment on his old debts at this time. The home he and W purchased together in 1991 was foreclosed on in 2000. Because the foreclosure sale didn't bring a sufficient sales price to cover the first mortgage debt, Applicant became liable for a deficiency. Only recently has he been able to obtain a reduction in the deficiency payments.

With his current employment, Applicant has been able to work on his debts to a small degree, but not to the extent necessary to address all of his old debts. He did enter into a consolidated debt payment arrangement with a debt consolidation group in April 2002 (*see ex. 4*), but was too overextended in his debts to carry out the debt arrangement's \$200.00 minimum monthly payment condition (R.T., at 47-48). His current job is contingent on his receiving a security clearance. Applicant's was able to document payment toward one of his old debts: payment of his debt to creditor 1.h in the sum of \$489.03.

Applicant also provided documentary proof of a payment arrangement with a listed creditor holding two delinquent accounts (debts 1.g and 1.i). Under his agreed payment plan with this creditor, he is to make monthly payments of \$100.00 a month beginning in February 2004 (*see ex. B*) until the debt is paid (expected to be 2005). His documentation also includes a recent payment reduction plan with the US agency holding his \$17,658.90 deficiency following his home foreclosure. He pays \$400.00 a month under the plan he worked out with the creditor and expects to pay off the deficiency sometime in 2008 (R.T., at 38-39). He has no current payment plans, though, with respect to any of his remaining creditors and has yet to make any payments on these still outstanding debts. And while some of the debts may have been allocated to W under their divorce decree, Applicant provides no documentation of any such allocation or acceptance by the affected creditors, despite an afforded post-hearing opportunity to do so. Prospects are uncertain of his obtaining future employment that generates more income.

Asked to complete an SF-86 in September 2001, Applicant omitted all but one of his debts when he answered questions 38 and 39, respectively (*see ex. 1*). He attributes his omissions to his uncertainty over the status of his debts, lacking as he was at the time of any documentation of his old debts. Applicant denies any deliberate intention to falsify and insists he simply lacked the necessary documentation of his debts at the time to identify and list them. However, he was then aware of his having delinquent debts but still failed to acknowledge as much in the general comments space provided in question 43 of the SF-86.

When interviewed by DSS Agent A in March 2002, Applicant was shown his credit report and asked to confirm the

debts listed in his credit report. Applicant, in turn, confirmed the debts as his own. Prior to being shown the credit report, Applicant did not volunteer any information about his debts and acknowledged their existence only after being shown his credit report by Agent B. Inferences warrant he concealed his debts (even if he did not know all of the specifics at the time) until confronted with his credit report by the interviewing DSS agent.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list policy guidelines to be made by judges in the decision making process covering DOHA cases. These guidelines, 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 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).

MC 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Personal Conduct

Basis: 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, falsification or misrepresentation 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 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 a 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 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 debts during his marriage to his former spouse (W). Since his divorce, he has continued to struggle with his finances and has been unable to seriously address his old debts, which include a large deficiency following his home foreclosure in 2001.

At the present, Applicant remains obligated, jointly and severally, on his old debts which still exceed \$25,000.00 in the aggregate. While Applicant remains interested in paying these debts when he is able, he has not been able to provide any documented plan for repaying his creditors with his current monthly income, which reflects a negative monthly income on his latest personal finance statement. 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).

Over time, 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). Put another way, the assumed possibility an applicant might achieve resolution of his outstanding debts at some future date is not a substitute for a worthy track record of remedial actions, or evidence of financial reform or rehabilitation in the present. *Cf.* ISCR Case No. 98-0614 (July 12, 1999). Security clearance decisions are, of course, never an exact science, but rather involve predictive judgments about a person's security eligibility based on the person's past conduct and present circumstances. *See Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Without any meaningful payment documentation of repayment efforts or definitive plan to address his major debts with his current resources, Applicant lacks the probative mitigation necessary to absolve him of the pressure and judgment risks associated with being significantly in debt.

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 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 to date. Unfavorable conclusions warrant, accordingly, with respect to subparagraphs 1.a through 1.f and 1.j through 1.l under Guideline F. By contrast, favorable conclusions warrant with respect to subparagraphs 1.g through 1.i.

Potentially serious and difficult to reconcile with the trust and reliability requirements for holding a security clearance are the timing and circumstances of Applicant's debt omissions in his September 2001 SF-86. By omitting all but one his debts when answering questions 38 and 39 pertaining to debts in excess of 180 and 90 days, respectively, and failing to signal any general debt omissions in the space provided by question 43, Applicant concealed materially important background information needed for the government to properly process and evaluate his security updates. He makes no claim of misunderstanding the questions: just his lack of information about the individual debts. Applicant's omissions, as such, were knowing, deliberate, and material to a determination about his clearance suitability. They invite application of one of the Disqualifying Conditions (DC) for personal conduct of the Adjudicative Guidelines: DC 2 (falsification of a security questionnaire).

Mitigation is difficult to credit Applicant with, since he failed to take advantage of any corrections of his SF-86 omissions before he was shown a credit report by the interviewing DSS agent over five months later. Not only has our Appeal Board found the use of Mitigating Condition (MC) 2 of the Adjudicative Guidelines for personal conduct (isolated, corrected falsification) to be unavailable to applicants seeking mitigation by treating the omission as isolated, but it has denied applicants availability of MC 3 (prompt, good faith disclosure) as well in circumstances (as here) where the applicant has failed to take advantage of an earlier DSS interview opportunity to make unprompted disclosures. *Compare* ISCR Case No. 97-0289 (January 1998) with DISCR Case No. 93-1390 (January 1995). Applicant in the present case is on record with not only falsifying his SF-86 but failing to correct his omissions in a timely and good-faith manner (free of confrontation).

Considering all of the evidence produced in this record and the available guidelines in the Directive (inclusive of the E.2.2 factors), unfavorable conclusions warrant with respect to subparagraphs 2.a and 2.b of Guideline E.

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 CONSIDERATIONS): 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

Sub-para. 1.k: AGAINST APPLICANT

Sub-para. 1.l: 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