

KEYWORD: Financial

DIGEST: Applicant has a history of delinquent debts he incurred in 2001 and 2002 while underemployed. The debts total over \$20,000.00 and still remain significant after some efforts to repay them. While Applicant is to be encouraged in identifying and contacting his creditors in the past year, his repayment efforts remain too much a work in progress to make any safe predictable judgments at this time about his debt resolution prospects. Applicant fails to mitigate security concerns associated with his delinquent debts. Clearance is denied.

CASENO: 02-24059.h1

DATE: 09/24/2004

DATE: September 24, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-24059

**DECISION OF ADMINISTRATIVE JUDGE**

**ROGER C. WESLEY**

**APPEARANCES**

**FOR GOVERNMENT**

Juan Rivera, Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant has a history of delinquent debts he incurred in 2001 and 2002 while underemployed. The debts total over \$20,000.00 and still remain significant after some efforts to repay them. While Applicant is to be encouraged in identifying and contacting his creditors in the past year, his repayment efforts remain too much a work in progress to make any safe predictable judgments at this time about his debt resolution prospects. Applicant fails to mitigate security concerns associated with his delinquent debts. Clearance is denied.

### **STATEMENT OF THE CASE**

On July 31, 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 15, 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 January 16, 2004, and received it on February 3, 2004. Applicant responded to the FORM within the 30 days provided him with supplemental documentation regarding his finances. The case was assigned to me April 29, 2004.

### **SUMMARY OF PLEADINGS**

Under Guideline F, Applicant is alleged to have accumulated a number of delinquent debts: three in all that exceed \$20,000.00. For his answer to the SOR, Applicant admitted each of the allegations with explanations and attachments detailing payments and payment arrangements with two of the listed creditors.

### **FINDINGS OF FACT**

Applicant is a 33-year-old software developer for a defense contractors 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 prior periods of unemployment, Applicant accrued personal debt that he could not keep up with his limited resources. Following his layoff from a defense contractor in September 2001 he worked various part-time contracts for the ensuing six months, which did not produce enough income to pay all of his debts. Among the debts he permitted to become delinquent during this period of very limited employment were the three debts owed to creditors 1.a through 1.c. Altogether, these debts exceed \$20,000.00.

After receiving the SOR, Applicant contacted his old creditors and was successful in paying the entire balance owed to one creditor (creditor 1.b). With one of the two remaining creditors, he was able to complete a payment arrangement (creditor 1.a). He documents making one \$50.00 payment in July 2003 on this debt, but no more. Applicant provides no time line as to how he expects to repay this \$8,000.00 plus debt. He has been unsuccessful, too, in completing any kind of settlement arrangement with his third creditor (creditor 1.c), to whom he owes over \$7,800.00. By his response to the FORM, he indicates he has not been able to make any further progress in repaying his debts since he lost his current job due to the lack of an interim clearance.

### **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**

*The 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 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 accrued considerable delinquent debt in 2001 and 2002 following his layoff. The three debts of concern to the Government exceed \$20,000.00, and have been only partially paid down since the issuance of the SOR in January 2003.

Despite his more recent efforts to identify and work on his old debts, Applicant remains obligated to two of the major creditors listed in the SOR, save for one identified payment to creditor 1.a in July 2003. On this record, 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).

While Applicant's accrued debts are accompanied by some extenuating circumstances (*viz.*, lack of steady good paying work following his layoff in 2000), for the most part his finances have permitted modest attempts to pay on his old creditors with the resources available to Applicant after he joined his most recent defense contractor in April 2002. Besides the listed creditors he describes, he does not identify what past due creditors he addressed after returning to full time employment in 2002.

Applicant's debts are neither extenuated nor mitigated enough to enable him to take advantage of any of the mitigating conditions at this time. His six months of underemployment in 2000-2001, while problematic, does not appear to have been so prolonged as to preclude his addressing his delinquent debts when he returned to work with his most recent defense contractor. Extenuation is not demonstrated sufficiently to enable him to invoke MC 3 (conditions largely beyond the person's control) of the Guideline. While he has paid one of the three delinquent debts and made a payment on a third one, his overall repayment efforts remain a work in progress and insufficient at this time to invoke any of the mitigating conditions of the Guidelines, primarily MC 6 (initiated a good-faith effort to repay overdue creditors) based on his repayment efforts. The Appeal Board has counseled against according much weight to belated efforts to address delinquent debts well after the security clearance process has been initiated. *See* ISCR Case No. 02-33581 (July 20, 2004). Also, where there is insufficient evidence of repayment efforts after the conditions that contributed to an applicant's delinquent debts have passed, the Appeal Board has cautioned against crediting the applicant with either non-recent financial difficulties (MC 1 of the Guidelines) or excuse from addressing his delinquent debts (even those accrued because of extenuating circumstances). *See* ISCR Case No. 03-01059 (September 2004).

To Applicant's credit, he has since taken steps to identify his creditors and accept responsibility for some of his debts. At the same time, he provides no viable repayment plan with his current resources. And his efforts to date are not of sufficient strength to enable him to mitigate security concerns associated with his longstanding delinquent debts.

Taking into account all of the circumstances of Applicant's accumulated debts, the absence of sufficient attention he has shown with his debts in the past, and recent efforts in identifying and addressing his debts, unfavorable conclusions warrant with respect to subparagraphs 1.a and 1.c. , of the allegations governed by the Adjudicative Guidelines pertinent to Guideline F. Favorable conclusions warrant with respect to subparagraph 1.b of the allegations covered by the Guideline.

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: AGAINST APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: 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