

KEYWORD: Financial

DIGEST: Applicant accrued debts during a troubled marriage that she became responsible for covering as a single parent following her divorce and unsuccessful attempts at reconciliation. Unable to keep up with her under the Chapter 13 plan she and her husband petitioned for, she stopped making payments and accepted a dismissal of her joint petition. Applicant has since obtained a Chapter 7 discharge of her debts (including the ones she inadvertently omitted from her petition) and has returned to school to obtain the education and training necessary to help her advance within her company. She is current with her debts and is well regarded by her coworkers. Applicant mitigates security concerns associated with her delinquent debts. Clearance is granted.

CASENO: 02-24446.h1

DATE: 03/08/2005

DATE: March 8, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-24446

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Department Counsel

FOR APPLICANT

Ronald C. Systus, Esq.

SYNOPSIS

Applicant accrued debts during a troubled marriage that she became responsible for covering as a single parent following her divorce and unsuccessful attempts at reconciliation. Unable to keep up with her under the Chapter 13 plan she and her husband petitioned for, she stopped making payments and accepted a dismissal of her joint petition. Applicant has since obtained a Chapter 7 discharge of her debts (including the ones she inadvertently omitted from her petition) and has returned to school to obtain the education and training necessary to help her advance within her company. She is current with her debts and is well regarded by her coworkers. Applicant mitigates security concerns associated with her delinquent debts. Clearance is granted.

STATEMENT OF CASE

On December 19, 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 February 20, 2004, and initially requested her case be decided on the written record. Subsequently, she requested a hearing, which was administratively granted. The case was assigned to me on September 28, 2004, and was scheduled for hearing on October 28, 2004. A hearing was convened on October 28, 2004, 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 three witnesses (including herself) and four exhibits. The transcript (R.T.) of the proceedings was received on November 5, 2004.

SUMMARY OF PLEADINGS.

Under Guideline F, Applicant is alleged to (a) have petitioned for Chapter 13 bankruptcy in September 1994, and later voluntarily dismissed her petition and failed to make her payments and (b) incurred excessive delinquent debts over a 10-year period (26 in all), totaling more than \$11,000.00. For her response to the SOR, Applicant admitted the allegations but claimed her debts were either discharged in Chapter 7 bankruptcy in September 2003, or were otherwise paid.

FINDINGS OF FACT

Applicant is a 38-year-old tech coordinator 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.

Applicant, married her former husband (H) in 1983 at the age of 17. She has been a single parent raising her three sons over the past eight years since divorcing H whose drinking had become unmanageable. Shortly after filing for divorce in 1994, she and H jointly filed for Chapter 13 wage earners' relief (in September 1994) to achieve some relief from their creditors. Altogether, Applicant and H incurred more than \$11,000.00 in delinquent debts (26 in all) during their marriage, which she couldn't pay, sans any help from H, with her income as a single parent.

After filing for divorce in 1994, Applicant tried reconciling with H. During their brief reconciliation, H's drinking only worsened, and in October 1995, H left the home and moved to another state (R.T., at 36-37). When he returned home a month later, he didn't improve in his drinking or in his financial responsibility. To help with the bills, Applicant took a second job as a waitress. She continued to work her waitress job, even after obtaining her current position with a defense contractor.

Unable to meet their monthly payments established by the bankruptcy court under their Chapter 13 plan, Applicant and H voluntarily dismissed their petition in 1996. For the ensuing two years they periodically tried reconciliation, but to no avail, before finalizing their divorce in March 1996 (*see ex. 1*). Even after the divorce had become final, Applicant tried reconciling with H (primarily for the sake of the children), but again without success (R.T., at 40-41).

H seldom met his court-ordered child support of \$718.00 a month (R.T., at 38-39). Applicant enlisted a private child

support enforcement agency to help her collect her entitled child support, but soon terminated the arrangement (unwilling to pay 33 per cent of support funds collected).

Settling in on her own in a local apartment with her three boys, Applicant returned to school in 2002 and commenced working for her current employer. To date, she has earned 51 credits towards her bachelors degree. To pay for her schooling, she has taken out student loans to supplement her employer's contributions.

To resolve her old debts, which she could not pay off with her resources as a single parent, Applicant filed for Chapter 7 bankruptcy relief in June 2003. She recently learned that she omitted several credit card creditors in her unsecured creditor schedule. Although her omissions were inadvertent, she has, nonetheless, repaid two of these creditors (creditors 1.o/p and 1.z) in full since her September 2003 discharge (R.T., at 51-54). She has received no calls from any of the remaining three omitted creditors since her discharge and, on the advice of counsel, considers these creditors' debts to have been discharged in her Chapter 7 bankruptcy.

Applicant generally meets her current expenses and obligations with her present income (R.T., at 47-48). The \$515.00 monthly net remainder reported in her June 2002 DSS statement didn't include the assorted expenses she pays out every month for her boys with little child support from (R.T., at 71-74). While H has contributed some child support, he remains far behind in his support obligations to Applicant. Besides her current expenses, Applicant remains liable for the repayment of her student loans, currently over \$13,000.00, inclusive of a \$4,000.00 Pell grant. She expects this loan to mature six months following her expected graduation from college in the Spring of 2006 (R.T., at 66-67), and to have the income to take care of the monthly loan obligations when they become payable.

Applicant is well regarded by her supervisors, coworkers and customers. She has received numerous commendations recognizing her contributions and is credited with outstanding personnel evaluations since her employment in 2002.

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 of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

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.

CONCLUSIONS

Applicant accrued numerous delinquent debts during a strained marriage, which she tried unsuccessfully to resolve through Chapter 13 relief in 1994, and periodic reconciliations with H before finally divorcing him in 1996. With inadequate income to match her expenses as a single mother with little child support from H, Applicant settled on discharging her debts in 2003 through Chapter 7 bankruptcy relief and obtained her discharge in September 2003. Although she inadvertently failed to list five of her unsecured creditors, she has since paid two of them. The three remaining omitted debts have not been pursued by the creditors and are considered discharged in Applicant's no-asset bankruptcy, irrespective of their lack of scheduling (*see In re James*, 184 B.R. 147, 150-51 (ND Ala. 1995)).

Based on Applicant's considerable accumulation of delinquent debt over the more than 10 years preceding her Chapter 7 bankruptcy discharge, two of the Disqualifying Conditions (DC) of the Adjudicative Guidelines for Guideline F apply: E2.A6.1.2 (*A history of not meeting financial obligations*) and E2.A6.1.3 (*Inability or unwillingness to satisfy debts*). Her accrued debts are accompanied, though, by extenuating circumstances (*viz.*, divorce followed by single parenting responsibilities amidst monetary shortfalls).

Applicant's debts are both extenuated and mitigated enough to enable her to take advantage of two of the applicable mitigating conditions of the Guidelines. The financial strains exacerbated by a deteriorating marriage and the financial irresponsibilities of her ex-husband account for her prolonged inability to pay her debts through the Chapter 13 plan she and her husband initially chose, but later abandoned for lack of sufficient funds to take care of the required monthly payments. In Applicant's case, extenuation and mitigation are demonstrated sufficiently to enable her to invoke both E2.A6.1.3.3 (*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)*) and E2.A6.1.3.6 (*The individual initiated good-faith efforts to repay overdue creditors or otherwise resolve debts*) of the Guideline, based on her prevalent financial circumstances between 1990 and 2003, and her good-faith payment attempts before settling on Chapter 7 bankruptcy petitioning in June 2003.

Taking into account all of the circumstances surrounding Applicant's 1994-1996 unsuccessful Chapter 13 efforts and the good-faith efforts she demonstrated in trying to repay her debts as a single parent with very limited resources, Applicant succeeds in mitigating the Government's security concerns at this time. Favorable conclusions warrant, accordingly, with respect to subparagraphs 1.a through 1.aa of the allegations governed by the Adjudicative Guidelines pertinent to Guideline F.

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): 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

Sub-para. 1.i: FOR APPLICANT

Sub-para. 1.j: FOR APPLICANT

Sub-para. 1.k: FOR APPLICANT

Sub-para. 1.l: FOR APPLICANT

Sub-para. 1.m: FOR APPLICANT

Sub-para. 1.n: FOR APPLICANT

Sub-para. 1.o: FOR APPLICANT

Sub-para. 1.p: FOR APPLICANT

Sub-para. 1.q: FOR APPLICANT

Sub-para. 1.r: FOR APPLICANT

Sub-para. 1.s: FOR APPLICANT

Sub-para. 1.t: FOR APPLICANT

Sub-para. 1.u: FOR APPLICANT

Sub-para. 1.v FOR APPLICANT

Sub-para. 1.w FOR APPLICANT

Sub-para. 1.x FOR APPLICANT

Sub-para. 1.y FOR APPLICANT

Sub-para. 1.z FOR APPLICANT

Sub-para. 1.aa 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. Clearance is granted.

Roger C. Wesley

Administrative Judge