

KEYWORD: Financial

DIGEST: Applicant has a history of delinquent debts he incurred between 1993 and 1996 before his divorce. The debts total over \$63,000.00 and still remain unresolved after some recent efforts to contact his creditors. While Applicant is to be encouraged in identifying and contacting his creditors in the past year, his repayment efforts remain too uncertain facilitate 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: 02-25482.h1

DATE: 09/30/2004

DATE: September 30, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-25482

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of delinquent debts he incurred between 1993 and 1996 before his divorce. The debts total over \$63,000.00 and still remain unresolved after some recent efforts to contact his creditors. While Applicant is to be encouraged in identifying and contacting his creditors in the past year, his repayment efforts remain too uncertain facilitate 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 24, 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 22, 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 27, 2004, and received it on February 19, 2004. Applicant did not respond to the FORM within the 30 days provided him. The case was assigned to me April 7, 2004.

SUMMARY OF PLEADINGS

Under Guideline F, Applicant is alleged to have accumulated a number of delinquent debts: eight in all that exceed \$63,000.00, one of which resulted in an adverse judgment. For his answer to the SOR, Applicant admitted each of the allegations, but attributed them to his divorce and imposed child support.

FINDINGS OF FACT

Applicant is a 54-year-old bartender for a defense contractor located on a military facility who seeks to retain his 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.

Between 1993 and 1996, Applicant and his spouse accumulated numerous debts which had become delinquent at the time of their divorce in 1996. Applicant reached a settlement agreement that allocated payment responsibility for the listed debts in the SOR to Applicant. While Applicant has made contact with his creditors since the issuance of the SOR, he has had no tangible success in arranging payment with any of them. He has not explored either bankruptcy or credit counseling, or otherwise provided any documented plan for resolving his debts.

Based on Applicant's most recent personal financial statement in June 2002, he has a net monthly remainder of \$974.00. This would have enabled him to pay on some of his debts before the issuance of the SOR, even after making allowance for the child support he was paying to his ex-spouse. Whether his personal finances have improved or deteriorated since 2002 is not developed in the record and cannot support drawn inferences one way or the other.

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 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).

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 and his spouse accrued considerable delinquent debt between 1993 and 1996. By virtue of the settlement agreement he reached with his spouse in connection with their 1996 divorce, the debts listed in the SOR were allocated to him for payment. With no documented approved substitution of obligors, these debts by all record accounts would have remained his responsibility on a joint and several basis, even without the settlement allocation. The admitted debts exceed \$63,000.00 and encompass both a mortgage deficiency (of around \$45,000.00) and a personal judgment exceeding \$5,000.00 that have not been resolved by Applicant. None of the eight debts of concern to the Government have paid or otherwise resolved by Applicant since the issuance of the SOR.

Despite his more recent efforts to identify and work on his old debts, Applicant remains obligated to each of his creditors listed in the SOR. 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.*, divorce), for the most part his finances have permitted modest attempts to pay on his old creditors with the resources available to him since at least 2002. Aside from making contact with his creditors since the issuance of the SOR, he makes no showing of making

payments or arranging settlements with his creditors.

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 assumed responsibility for the debts listed in the SOR occurred back in 1996 amidst no identified unusual circumstances, save for his divorce. Since returning to work, he has had ample opportunity pay or address his debts with the resources available to him. Extenuation is not demonstrated sufficiently to enable him to invoke C 3 (conditions largely beyond the person's control) of the Guideline. Nor do his post-SOR efforts to date in contacting his creditors reflect the strength of commitment necessary to enable him to invoke any of the other mitigating conditions of the Guidelines, primarily MC 6 (initiated a good-faith effort to repay overdue creditors). *See* ISCR Case No. 02-33581 (July 20, 2004). Further, where applicant repayment efforts are lacking after the conditions that contributed to his delinquent debts have passed, the Appeal Board has cautioned against excusing the applicant 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 through 1.h. 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): 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: AGAINST 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