

KEYWORD: Financial

DIGEST: Applicant has a history of delinquent consumer debts he accrued while a student and immature about handling financial obligations. Having exhausted the funds given him by his father on bad investments, gambling losses and an automobile sold to him under false pretenses, Applicant could not repay the incurred consumer debts while he was going to college and had no money to expend for non-living expenses and debts. After initially indicating he would do nothing about his old debts which had been written off by the creditors, Applicant reversed course and paid off all of his delinquent debts and is committed now to maintaining current payment status with his all of his debts. By his demonstrated good-faith payment efforts, Applicant mitigates security concerns associated with his delinquent debts. Clearance is granted.

CASENO: 02-26019.h1

DATE: 08/16/2004

DATE: August 16, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-26019

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of delinquent consumer debts he accrued while a student and immature about handling financial obligations. Having exhausted the funds given him by his father on bad investments, gambling losses and an automobile sold to him under false pretenses, Applicant could not repay the incurred consumer debts while he was going to college and had no money to expend for non-living expenses and debts. After initially indicating he would do nothing about his old debts which had been written off by the creditors, Applicant reversed course and paid off all of his delinquent debts and is committed now to maintaining current payment status with his all of his debts. By his demonstrated good-faith payment efforts, Applicant mitigates security concerns associated with his delinquent debts. Clearance is granted.

STATEMENT OF THE CASE

On September 8, 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 September 29, 2003, and requested a hearing. The case was assigned to me on March 5, 2004, and was scheduled for hearing on April 7, 2004. A hearing was convened on April 7, 2004, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of three exhibits; Applicant relied on one witness (himself) and six exhibits. The transcript (R.T.) was received on April 15, 2004.

SUMMARY OF PLEADINGS

Under Guideline F, Applicant is alleged to (a) have incurred five delinquent debts totaling in excess of \$9,600.00, which he expressed no intention of paying, (b) have a personal financial statement of June 2002 which reports a \$968.00 monthly remainder, but no intention to pay his old debts, and (c) have incurred his listed debts due to gambling losses (currently gambles twice a year).

For his answer to the SOR, Applicant admitted most of the allegations, denying a net monthly remainder of \$968.00 and current gambling. In explanation, he claimed the listed debts to be debts he incurred eight to nine years previous, which have since been written off by the creditors. He reaffirmed his intention not to pay any of these debts. He claimed the primary reasons for his incurring the listed debts was not gambling losses but (a) because \$10,000.00 was stolen from him in the process of his attempting to purchase a car from a con artist and (b) due to a few bad investments. He claimed he is not a person in personal distress, does not have a gambling addiction, and does not have any trouble paying his bills every month.

FINDINGS OF FACT

Applicant is a 29-year-old systems 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 adopted as relevant and material findings. Additional findings follow.

In January 1995 Applicant's father created a college fund for Applicant with an up-front \$50,000.00 contribution and encouraged Applicant to learn more about the stock market. Ignoring his father's advice and dropping out of school shortly after receiving his father's contribution, Applicant invested the money in expensive vacations, an apartment with furnishings, entertainment, a luxury car, some risky investments, and gambling exercises while on vacation (*see ex. B*), losing virtually all of the money in the process. Altogether, he lost \$30,000 on bad stock investments, \$10,000.00 in gambling, \$10,000.00 from a car dealer who sold him a defective car, and \$10,000.00 in vacationing (R.T., at 47-49). After losing this money, he began living off of the credit cards he had obtained in college.

Applicant accumulated over \$9,600.00 in credit card and other consumer-related debt between 1994 and 1995 that he could not repay. Some of this credit card debt was used to fund his gambling activities, along with other expenses (R.T., at 48-49). Among these debts were the five consumer debts listed in the SOR. He attributes some blame for his debts to the credit card companies who offered him too much credit as a student (*see ex. 2*).

Unable to keep up with his mounting debts and fast running out of money, Applicant moved back in with his parents in

June 1995. Despite letters from himself and his lawyer, he was never able to recoup any of his money from the car dealer who had misled him.

Applicant ceased paying on the listed five debts, and by 1996 they had been placed with collection agencies for enforcement. Although aware of his responsibility for the debts, Applicant ignored the debts and even returned to gambling for a spell in 2001, albeit never to the point of addiction. After obtaining his college degree in computer science in 2001, Applicant accepted employment with a series of employers in the software computer field. He married in 1999 and bought a home. With a mortgage and family to support, Applicant had no remainder left over to pay his old debts (R.T., at 41-42). He currently makes around \$59,000.00 a year. His monthly expenses total around \$3,500.00 a month (including his mortgage and payments on two cars), which leaves him with about \$400.00 left over every month (R.T., at 54-55). Applicant still gambles on occasion but never when he has money to lose, and never with friends. He has incurred no gambling debts he is responsible for.

When asked by an interviewing DSS agent in June 2002 how he planned to address his old debts, he told the agent he had personally written off these debts, which had been charged off by the creditors years in 1996 (*see ex. 2, R.T., at 52-53*). Applicant blamed the debts on the creditors who assigned him too much credit. He repeated his expressed intentions not to pay off any of his old debts when he answered the SOR a year later. He has since paid off each of the listed creditors (*i.e., creditors 1.a through 1.e*) and currently lives within his means (*see ex. D; R.T., at 64-66*). He acquiesced in leaving his debts in charged off status until he received the SOR and became concerned about losing his security clearance.

Except for the listed debts he has since discharged, Applicant has and continues to be current with his debts, while living within his means with his wife and two children. The debts reported in his most recent credit report reflect current payment status for every one of the listed debts (*see ex. E*). This includes his mortgage and other large debt items shown in his latest credit report. His old debts that have since been paid are not shown in this credit report (*compare exs. 3 with E*).

Applicant is highly regarded by his managers and team leaders (*see ex. F*). He is credited with exemplary performance as a software engineer for his development team. Applicant is characterized as honest, reliable and trustworthy in executing his responsibilities as a lead developer of portions of his company's workstation software. He is respected for his flexibility and adaptability in his support of his company's software maintenance, integration and system testing and site support activities (*ex. F*). Overall, he is viewed as an excellent performer by his company's management.

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.

DC 5. Financial problems that are linked to gambling, drug abuse, alcoholism, or other issues of security concern.

Mitigating Conditions

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 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.

CONCLUSION

Applicant accrued considerable delinquent debt between 1995 and 1996 while a young college student who irresponsibly accrued credit-card and consumer debt with little thought as to how he would repay his debts. Altogether, Applicant accumulated some \$9,600.00 in credit-card and consumer debts over this two-year span, which were subsequently written off by his creditors as bad debts. The Government's security concerns center on the amount of delinquent debt he compiled between 1995 and 1996 without any demonstrated repayment plan before the issuance of the SOR.

All of the debts Applicant compiled in 1995 and 1996 are consumer-related (mostly generated by credit cards) which Applicant accumulated in college with no realistic plan for repaying them. Each of these debts became delinquent and were ultimately charged off by the creditors as uncollectible and reported as bad debts in Applicant's credit reports. 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). DC 5 (financial problems that are linked to gambling, *etc.*) also bears some applicability; for Applicant is of record in using his credit card to finance his gambling back during the 1995-1996 timer period.

Applicant's debts are attributable mostly to his immaturity and failure to grasp the importance of prudent planning and investment in his financial future. While he assigns part of the blame to the creditors that extended him credit in the knowledge he was a student with limited resources, the responsibility for accepting credit and running up large debit balances was always Applicant's. He now acknowledges this responsibility as his own.

Extenuation of Applicant's debts is lacking. Immaturity and squandering of the contribution given him by his father for investing are not sufficient reasons to extenuate his personal financial obligations fixed by the debt he accepted from the creditors who seek repayment from him. Applicant acknowledges as much and has taken the necessary steps to discharge his debts.

Until recently, Applicant simply wrote off his old debts and relied on the absence of any enforcement action by any of his old creditors to afford him just reason for simply ignoring them. Charge-offs and statute of limitations bars, however, have never provided mitigation sanctuaries for applicants seeking to avoid addressing their old debts. While such devices might provide legal protection to an applicant seeking to avoid enforcement action, their availability does not meet the good-faith repayment demonstration test of MC 3 of the Guidelines for finances. *See* ISCR Case No. 02-32606 (January 2004); ISCR Case No. 01-09691 (March 2003).

Still, Applicant has since repaid all of his old debts and presents a clean credit report of creditors in current payment status. Because the core concern of Guideline F is overextended debt that places the individual at risk to engaging in illegal acts to generate funds, and not just past actions that are covered by the disqualifying conditions, Applicant's shown payments of his listed debts and clean creditor report of his current finances enables him to mitigate active security concerns associated with his debt problems. Now in current status, Applicant can be expected to continue to pay all of his incurred debts in a timely way.

Appraising Applicant's mitigation with respect to all of his covered debts, Applicant may take advantage of MC 6 (initiated good-faith effort to repay overdue creditors) based on his repayment efforts, but not MC 1 (behavior not recent), MC 2 (isolated incident) or MC 3 (circumstances beyond his control). Applicant's resistance to paying his old debts until recently represents continuing behavior and not simply behavior frozen in time when it occurred. Applicant's debt delinquencies were neither isolated nor beyond his control, either then or since he took his position with his current defense contractor. Nonetheless, he has paid all of his listed debts and now no longer is at any manifest risk to generate funds to pay his debts: the identified core concern of Guideline F.

Taking into account all of the circumstances of Applicant's accumulated debts and the good- faith efforts he demonstrated in satisfying his debts when he became able to so with his current income resources, favorable conclusions warrant with respect to subparagraphs 1.a through 1.k as to 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

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