

DATE: June 30, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-00060

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 accumulated during periods of his former marriage. While his debts are somewhat extenuated by work shortage and extra expense associated with managing two households following his separation and ensuing divorce, he has not been able to mitigate any of the accrued debts, save for his child support arrearage which he has been addressing. As such, Applicant fails to absolve himself of security risks associated with unresolved debts and unwillingness to explore other potential options (such as debt consolidation, or even bankruptcy). Clearance is denied.

STATEMENT OF THE CASE

On November 7, 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 December 24, 2003, and requested a hearing. The case was assigned to me on February 2, 2004, and was scheduled for hearing on March 3, 2004. A hearing was convened on March 3, 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 13 exhibits. Applicant relied on one witness (himself) and no exhibits. The transcript (R.T.) was received on March 11, 2004.

PROCEDURAL ISSUES

Before the close of the hearing, Applicant requested leave to keep the record open to afford him the opportunity to provide copies of his recent direct deposit advice slips to document his voluntary deductions for his child support

payments for his three children. There being no objections from Department Counsel, and good cause being demonstrated, Applicant was granted five days in which to supplement the record. Government, in turn, was afforded one day to respond. Within the time provided, Applicant provided copies of his direct deposit slips for the pay period ending February 13, 2004, and for the pay period ending February 27, 2004. Department Counsel offered no objection to the admission of these direct deposit slips, and they are admitted as Applicant's exhibit A.

SUMMARY OF PLEADINGS

Under Guideline F, Applicant is alleged to have experienced financial difficulties. Specifically, he is alleged to have accumulated six debts totaling in excess of \$27,000.00 and to have become financially overextended based on his personal financial statement of July 2003 which reflects a negative monthly remainder.

For his response to the SOR, Applicant admitted most of his listed debts, but denied currently being in arrears for child support for the amounts alleged. Applicant denied being financially overextended. In explanation, he claimed the \$222.00 debt attributed to creditor 1.a represented a bill for medical services provided his children, his insurance company should have paid. He claimed the debts attributed to creditors 1.b and 1.c represented bills for telephone and wireless services he left in place for his wife and children when he moved out of the house, and thought his wife had paid. He claimed the \$7,258.00 debt attributed to creditor 1.d represented a deficiency on a voluntary car repossession he had worked out with the creditor. He claimed the \$12,290.87 debt attributed to creditor 1.e represented a deficiency on a judgment a car lender obtained against Applicant when his ex-wife failed to keep up with the payments she promised. Applicant denied being currently in arrearage for child support on either of his four children for the amounts alleged in the SOR.

FINDINGS OF FACT

Applicant is a 43-year-old security police officer 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 W in 1986. They had three children of their own and a son by W's previous marriage. They range in ages from 13 to 17. Until his separation from W in 1998 he managed to stay current with his finances.

Applicant's finances tightened considerably when he separated from W in 1998 and moved out of the house. After separating he became responsible not only for his own expenses and obligations, but his spouse's as well. For instance, he continued to leave the telephone and cell phone services (both in his name) in active status for the benefit of W and his children. He also continued to assume responsibility for the medical services of his children that the insurance company did not pay. He continues to look to W to take care of any balances owing on the telephone and wireless services, and for his insurance to reimburse any debts still owing on the medical services provided his children. He hasn't personally accepted responsibility for discharging any of these listed debts (*i.e.*, to creditors 1.a through 1.c).

During his marriage to W, Applicant purchased two vehicles in his name: one for W to drive and the other for himself. When he separated from W, she initially agreed to make payments on the vehicle she had been driving. Assuming W was continuing to make payments on the vehicle, he paid no attention to the monthly bill, and never made any attempts to verify her payments on the car.

When neither made payments on the car, the lender (creditor 1.d) filed suit against both Applicant and W and sought a civil judgment for the amount of the remaining balance owed on the vehicle. When Applicant and W appeared in court, the judge reportedly instructed both of them to turn in the vehicle. W complied. Nonetheless, both W and Applicant received deficiency notices from creditor 1.e, who claimed a deficiency balance owing of \$12,290.87. Believing this debt still to belong to W, Applicant ignored this notice as well, and has paid nothing on this debt to date.

Applicant does accept personal responsibility for a deficiency arising out of another repossession. This repossession involved his own car which he let slip into default after he encountered performance problems with the vehicle and returned it to the dealer (creditor 1.d). He later refused to pay the claimed deficiency owing on the car (*i.e.*, approximately \$7,258.00).

Besides the listed consumer debts, Applicant became obligated to pay child support to W following their divorce. For the first couple of years he was able to stay current with his support payments. When he began to fall behind in his support payments in 1991, W went to court seeking child support (*see ex. 10*). The court, in turn, ordered Applicant to make \$200.00 a week in child support payments (which included \$8.00 a week in arrearage). When Applicant failed to honor the court's order, W returned to court with a motion for contempt against Applicant (*ex. 10*). Finding Applicant to be in contempt, the court reaffirmed Applicant's weekly child support obligations, added in the accumulated arrearage since the last order (calculated at the time to be \$1,400.00) and assessed attorneys fees.

Applicant hurt his hand in January 2002 and could not work for several months. With his income limited to his short term disability, he could not keep up with child support payments and still meet his other living expenses. Applicant, in turn, paid about \$500.00 to W for arrearage and agreed to continue paying his currently assigned support payments when he returned to work. As the result of his change in employment status, he was able to obtain an amended income order that reduced his weekly child support to W to just \$192.00 a week (*see ex. 11*), which under the terms of the order was to be deducted from his wages bi-weekly at the rate of \$205.00 a pay period (inclusive of arrearage and service fees).

Applicant currently makes \$400.00 bi-weekly direct deposits to satisfy his child support obligations to W. Through these direct deposits he has been able to reduce his child support arrearage to approximately \$1,557.00. He will continue with his direct deposits until the arrearage is discharged.

In addition to the direct deposits he makes to reduce his child support arrearage to W (for his three children by her), Applicant also pays \$150.00 bi-weekly to the mother of his son. His arrearage to his son, though, still exceeds \$9,000.00 (*see ex. 12*).

Applicant is able to meet his current expenses and obligations in addition to paying on his child support arrearage. However, he has been unable to pay anything towards his other debts listed in the SOR with his available resources. His personal financial statement attached to his answers to propounded DOHA interrogatories in July 2003 reported net monthly income of \$1,634.00 after deductions of \$1,300.00 for child support and a net positive remainder of \$565.00 (*see ex. 3*). This contrasts with the negative monthly remainder of \$356.00 he reported in August 2002 of net monthly income after child support deductions of \$2,355.00 (*compare ex. 2*).

Applicant attributes his positive turn around to more accurate reporting of his finances in 2003, but provides little more information to help reconcile the discrepancies, which include increased child support payroll deductions and child support payments not reported in his August 2002 statement. Applicant provides no definitive steps either as to how he proposes to deal with his non-child support-related debts. Despite prior assurances of staying up with his current debts and promises to clean up his old credit when he is able, Applicant has able to do no more than stay current with his present expenses and pay down his child support arrearage (R.T., at 53-55).

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, 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. Judges must also 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 pertinent to 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 affluence 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 has 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 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.

CONCLUSIONS

Applicant and his spouse accrued considerable debts during their marriage, some medically related, some related to telephone and wireless services, and others associated with car loans. Faced with work-related injuries that curtailed his ability to work for awhile and mounting pressures from his spouse and mother of another child to fulfill his child support obligations, Applicant ignored large accrued utility debts incurred by his wife and children and deficiencies on two car loans following their voluntary repossession. At present, Applicant remains obligated, jointly and severally, on each of the listed consumer debts in the SOR, but has been unable to do any more than meet his current expenses and pay down his child support arrearage. While Applicant remains interested in addressing his other debt delinquencies, he provides no concrete plan as to how and when he will be able to pay on these debts. Prospects for any of these creditors pursuing him to enforce the covered debts are uncertain at this time.

Over time, our Appeal Board has shown general consistency in disallowing undocumented general applicant intention to repay old debts at some uncertain future date when resources become available. *Cf.* ISCR Case No. 01-17474 (March 7, 2003); ISCR Case No. 01-13653 (March 7, 2003); ISCR Case No. 01-12147 (January 21, 2003); *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).

Good-faith efforts to repay overdue creditors or otherwise resolve debts historically have required documented reasonableness and prudence in addressing debts, as well as probative showings that the applicant has taken the necessary and appropriate steps to bring his financial problems under control. *Cf.* ISCR Case No. 02-16631 (May 10, 2004); ISCR Case No. 99-9020 (June 4, 2001). Applicant has not been able to make this showing with the proofs he provided.

Security clearance decisions are, of course, never an exact science, but rather involve predictive judgments about a person's security eligibility based on his or her past actions. Without any meaningful repayment efforts on any of his consumer debts or definitive plan to address these debts with his current resources, Applicant is unable to mitigate the security concerns that are associated with being significantly in debt. *See Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988) regarding the level of proofs necessary generally to absolve an applicant of the pressure and judgment risks associated with being in debt.

Applicant's continued failure to provide any plan for addressing his old debts raises serious questions about his willingness or ability to be personally accountable. Other potential avenues for dealing with debt delinquencies (such as debt counseling or even bankruptcy) do not appear to have been explored by Applicant. On the strength of the evidence presented, the 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). Rather, Applicant has elected to put off his old debts until some indefinite time in the future when his resources permit.

While Applicant may take advantage of MC 3 (conditions largely beyond the person's control) of the Adjudicative Guidelines to extenuate some of the debts associated with his delinquency history, he may not invoke the mitigating provisions of MC 6 (initiated good-faith effort to repay overdue creditors), absent more concerted efforts to address his debts than he has shown to date. Unfavorable conclusions warrant, accordingly, with respect to subparagraphs 1.a through 1.e and 1.g under Guideline F. By virtue of the steady efforts he has demonstrated to addressing his child support arrearage, he is entitled to favorable conclusions with respect to subparagraph 1.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 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: FOR APPLICANT

Sub-para. 1.g: 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