

DATE: October 21, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-00243

ECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of delinquent debts he primarily accrued in connection with medical care he believed to be covered by his medical insurance at work. Unable to address his debts for a number of years due to illness and reduced work, he has since entered into repayment arrangements with most of his creditors and established payment histories with them. Applicant by his good-faith payment efforts mitigates security concerns associated with his delinquent debts, and he successfully refutes allegations of falsification of his security clearance application (SF-86) by a demonstrated misunderstanding of the status of his debts. Clearance is granted.

STATEMENT OF THE CASE

On November 3, 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 8, 2003, and requested a hearing. The case was assigned to me on June 2, 2004, and scheduled for hearing on July 20, 2004. A hearing was convened on July 20, 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 six exhibits; Applicant relied on two witnesses (including himself) and eleven exhibits. The transcript (R.T.) was received on July 30, 2004.

PROCEDURAL ISSUES

Before the close of the hearing, Applicant requested and was granted additional time to supplement th record with details of his inquiries and payments to his listed creditors. Applicant was afforded 14 days to supplement the record.

The Government, in turn, was afforded seven days to respond. Within the time permitted, Applicant supplemented the record with documentation of payments and correspondence with his creditors. His submitted exhibits are accepted as Applicant's exhibits J through P.

SUMMARY OF PLEADINGS

Under Guideline F, Applicant is alleged to have incurred numerous delinquent debts: twelve in all that exceed \$11,000.00 in total. Under Guideline E, Applicant is alleged to have falsified his SF-86 of July 2002 by omitting an unpaid judgment and his delinquent debts over 180 and 90 days delinquent, respectively.

For his response to the SOR, Applicant admitted two of his debts covered by Guideline F., but denied the remaining allegations. He claimed he never received any bills for several of the listed debts and believed most of the remaining debts were medical-related, which should have been paid by insurance. Of the remaining four listed debts, he denied any knowledge of them. Applicant claims the debts were the result of business losses incurred in connection with his financial support of a small business he operated between June 1998 and early 1999. He claimed his wife had been sending monthly \$50.00 payments on two of the listed debts (creditors d and j), and he has received no responses to his written inquiries. Applicant denied falsifying his July 2002 SF-86, claiming no knowledge of the delinquent debts attributable to him.

FINDINGS OF FACT

Applicant is a 59-year-old truck driver 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.

A truck driver for his current defense contractor since 1989, and possessed of little formal education, Applicant and his wife got into financial difficulties in the early 1990s as the result of work slowdowns and illness to each of them. Altogether, he accumulated over \$11,000.00 in delinquent debts (mostly medical-related) with 12 separate creditors. Most of his listed debts represent accrued bills for medical services Applicant and his wife received, which he believed were covered by his employer's medical insurance (R.T., at 49-50). Because his work required so much travel, he seldom saw the bills as they were received and relied on his wife and a driver friend (Ms. A) to take of them.

Sometime before 1996, an investor group known as A Company purchased Applicant's trucking employer. As the parent company of Applicant's employer, A Company assumed responsibility for the payment of driver insurance premiums that had been the recognized practice with Applicant's employer. By Applicant's accounts, A Company quit paying the insurance premiums without notifying Applicant and his fellow drivers. After two failed bankruptcy attempts in 1999 and 2001, A Company ceased business operations and sold off its assets to another investor group: B Company. Upon completing its purchase of Applicant's employer's assets, it quickly arranged for health insurance benefits for its drivers (Applicant included), and today Applicant's insurance premiums are fully funded by the parent entity of his employer.

Applicant currently nets around \$2,800.00 a month from his workman's compensation, which he relies on to sustain him until he is medically able to return to work (R.T., at 50-54). His wife receives \$380.00 a month in social security benefits (R.T., at 53). Since receiving the SOR they have made arrangements with their creditors to make small monthly payments on the listed delinquent debts they have identified as theirs (creditor 1.f being excepted) and document monthly payments on most of the debts, including his lone listed credit card debt with creditor 1.b. Their monthly payments to these creditors total \$1,288.83 (*see* exs. D through H and J through P; R.T., at 41-42, 74). They use their remaining monthly funds to buy necessities, pay their mortgage, assist their two daughters who reside with them, and pay their old debts (R.T., at 74-79)

Asked to complete his July 2002 SF-86, Applicant omitted his creditor 1.a judgment as well as his debts that were 180 days and 90 days delinquent, respectively. The form he completed he neither signed nor was afforded an opportunity to thoroughly review (R.T., at 89-90). He attributes his omissions to misunderstandings over whether he had any debts that were 180 and 90 days delinquent. Relying on his spouse and Ms. A to take care of his debts while he was on the road, he assumed his debts were either payed by his medical insurer or his spouse and never knew any of his debts were delinquent until he was shown a credit report by an interviewing DSS agent in August 2002 (*see* ex. 2; R.T., at 49-50

and 84-87).

Applicant expresses every intention of honoring his payment arrangements and paying off his delinquent debts on schedule (R.T., at 91-92). He is well regarded by supervisor and work colleagues and respected for his honesty, reliability and trustworthiness.

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 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).

MC 6. The individual initiated good-faith efforts to repay overdue creditors or otherwise resolve debts.

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Disqualifying Conditions: None.

Mitigating conditions: None.

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 debts between 1995 and 1999: some medically related which his insurance carrier has not paid, and some consumer-related. Altogether, Applicant accumulated over \$11,000.00 of medical and consumer debts. The Government's security concerns center on the amount of delinquent debt he compiled between 1995 and 1999 and his ensuing omissions of these debts from his pertinent answers to his SF-86.

Financial Issues

Relying on his medical insurance to pay his medical bills from creditors 1.a and 1.d through 1.l, Applicant did not address these debts for many years. Struggling finances attributable to loss of work accounted for the deficiencies with his other two creditors (creditors 1.b and 1.c). Each of Applicant's debts became delinquent and were ultimately either taken to judgment (as with creditor 1.a) or charged off by the creditors. 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).

Applicant's debts are attributable to a variety of extenuating circumstances. His covered medical debts that were written off between 1995 and 1999 involve debts for medical services and assumed wrongly by he and his wife to be covered by his medical insurance. His remaining debts involve consumer-related debts he was unable to address while ill and out of work.

Extenuation of Applicant's debts is not enough in and of itself to overcome the adverse trust implications associated with his accumulating so many delinquent debts without any evidence of addressing them until he received the SOR. But Applicant documents his entering into repayment arrangements with most of his creditors and establishing payment histories. Considering that the majority of his debts involve medical services which should have been covered by his employer's medical insurance, but wasn't, his repayment efforts with each of these creditors is entitled to considerable credit.

Applicant mitigates active security concerns associated with his debt problems by his payment efforts with most of his covered debts. Appraising Applicant's extenuating circumstances with respect to all of his covered debts, Applicant may take advantage of MC 3 (conditions largely beyond the person's control) of the Adjudicative Guidelines to extenuate his debt delinquencies. He may also avail himself of the mitigation benefits of MC 6 (initiated good-faith effort to repay overdue creditors) based on his repayment efforts.

Taking into account all of the circumstances of Applicant's accumulated debts and the good-faith efforts he demonstrated in satisfying his debts, even in the face of his continuing disability, favorable conclusions warrant with respect to subparagraphs 1.a through 1.l as to the allegations governed by the Adjudicative Guidelines pertinent to Guideline F.

Falsification Concerns

Posing potential security concerns, too, are Applicant's documented omissions of his creditor 1.a judgment and his covered delinquent debts from the SF-86 submitted electronically in his behalf in July 2002. His omissions are, however, attributable to his mistaken uncertainty over whether his debts (which he believed were either covered by his

insurance or otherwise were taken care of by his wife and friend while he out on the road). True, Applicant might have been more diligent about checking on the status of his debts and initiated court proceedings by creditor 1.a. Still, mistaken understanding of the status of his debts, attributable to both his very limited formal education and his reliance on others to address his bills, provide the most credible explanation for his SF-86 omissions in this case.

Applicant's explanations of his omissions are persuasive enough to avert inferences of knowing and wilful omission. There being no misconduct substantiated, no need to show extenuation or mitigation arises. *Cf.* ISCR Case No. 02-13568 (February 13, 2004). While Applicant's efforts lack due diligences inquiries of the state of his debts, his efforts reveal enough mistaken reliance on the unknown state of his debts to enable him to refute the allegations of falsification of his SF-86 covered in subparagraphs 2.a through 2.c Guideline E.

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

GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT

Sub-para. 2.a: FOR APPLICANT

Sub-para. 2.b: FOR APPLICANT

Sub-para. 2.c: 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