

DATE: January 31, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-04302

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Jr., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of delinquent debts and a failed Chapter 13 petition prior to his divorce in 2000. His listed debts exceed \$10,000.00 and remain significant because he has not addressed his debts despite his reported ability to do so when he became financially able. Nor is Applicant's concealment of his 1998 Chapter 13 petition in his security clearance application mitigated under any of the pertinent mitigation guidelines. Clearance is denied.

STATEMENT OF CASE

On December 31, 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 February 2, 2004, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on August 30, 2004. Applicant failed to respond to the FORM within the 30 days provided him. The case was assigned to me July 9, 2004.

SUMMARY OF PLEADINGS

Under Guideline F, Applicant is alleged to (a) have accumulated delinquent debts (13 in all) totaling in excess of \$10,000.00, (b) filed for Chapter 13 bankruptcy relief in August 1998 (dismissed in June 2000), and (c) manifested an inability and/or unwillingness to pay his bills.

Under Guideline E, Applicant is alleged to have falsified his security clearance application (SF-86) of October 2000 by omitting his filing a Chapter 13 bankruptcy petition when he answered question 33.

For his answer to the SOR, Applicant denied most of his alleged debts. He admitted his alleged debts to creditors 1.b, 1.e through 1.i, 1.l and 1.m. He denied deliberately omitting his chapter 13 petition, citing the dismissal of his petition as the reason for his omission.

FINDINGS OF FACT

Applicant is a 48-year-old communications field engineer for a defense contractors 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.

Applicant accumulated considerable debts during his 11-year tour of military service. After receiving non-judicial punishment in July 1998 for misusing his government travel card, he filed for Chapter 13 wage-earner's protection in August 1998. Under the court-approved plan, he agreed to pay \$166.00 a month to the bankruptcy trustee. Applicant and his wife made the required payments for about a year. But after he and his wife separated in 1999, they stopped making payments. His bankruptcy petition was, in turn, dismissed in June 2000.

Since dismissal of his bankruptcy petition, Applicant has made no tangible progress on his listed delinquent debts. While he denies responsibility for a number of the debts noted in his credit report, he provides no documentation to corroborate his denials. The only listed debt he claims is not his (creditor 1.f) is listed in his own September 2003 credit report. His listed debts in the SOR number 13 and total over \$10,000.00. Applicant provides no explanations for his failure to take care of any of these accumulated debts with the resources available to him (which include a reported \$358.00 net monthly remainder in the interrogatory response he submitted in September 2003). After indicating in his financial interrogatory response his intention to file for Chapter 7 bankruptcy relief, he has apparently done so; however, this is not documented either. Applicant provides no proof of any other plan to resolve his debt delinquencies.

Asked to complete a security clearance application in October 2000, he answered "no" to question 33 that inquired about any bankruptcy petition he filed within the previous seven years. He attributes his failure to acknowledge his 1998 Chapter 13 petition to his misunderstanding over whether dismissed petitions need to be listed. In the same SF-86 he also denied having any debts over 180 days and 90 days delinquent, respectively. His pattern of denials covering his debt responsibility and the extent of his delinquency on his many debts is too extensive to characterize his bankruptcy omission as the result of a good-faith misunderstanding. Inferences are drawn that his omission of his Chapter 13 petition was knowing and intentional.

In an interview with a Defense Security Agent (DSS) agent in July 2002 (almost two years after he executed his SF-86), Applicant disclosed his Chapter 13 petition. In his signed, sworn statement, he acknowledged review of his credit report referencing his delinquent debts and his Chapter 13 petition with the agent. Within the context of the statement, it appears Applicant volunteered nothing to the agent before he was shown his credit report.

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: None

Personal Conduct

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

Disqualifying Conditions:

DC 2. The deliberate omission, concealment, falsification or misrepresentation of relevant and material facts from any personnel security questionnaire, personal history statement or similar form used to conduct investigations, determine employment qualifications, award benefits or status,

determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

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 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 accrued considerable delinquent debts prior to 1998 when he filed for Chapter 13 bankruptcy relief (later dismissed for non-payment of the set monthly payment), which he has only minimally addressed despite promises he made to identify and pay them in a 2003 DSS interview. Applicant's listed delinquent debts (13 in all) have for the most part been charged off with no manifest intention to address or follow up on within the past six years. His accumulated debts and concealment of his Chapter 13 bankruptcy in an October 2000 SF-86 he submitted to the Government raise continuing security concerns regarding his judgment, reliability and trustworthiness.

Financial issues

Based on Applicant's considerable accumulation of delinquent debt, two of the Disqualifying Conditions (DC) of the Adjudicative Guidelines for Guideline F apply: DC 1 (history of not meeting financial obligations) and DC 3 (inability or unwillingness to satisfy debts) apply. While his accrued debts are accompanied by some extenuating circumstances (*viz.*, short periods of unemployment), 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 February 2003.

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 divorce following his military discharge, while likely adding to his financial difficulties, does not appear to have inhibited his ability to address his debts over time (almost four years have elapsed since his divorce). Significant delinquent debt attributable to an applicant that is not mitigated by good-faith resolution raises security risks over the potential for needed funds and recurrent judgment lapses. The government does not have to wait until an individual mishandles or fails to safeguard classified information before it can make an unfavorable security clearance decision. *Cf. Adams v. Laird*, 420 F.2d 230, 238-39 (DC Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970).

In Applicant's case, neither MC 3 (conditions largely beyond the person's control) nor MC 6 (initiated a good-faith effort to repay overdue creditors) of the Guideline. To invoke either of these mitigation conditions requires a strong Applicant showing of extenuating circumstances contributing to his debt delinquencies and/or earnest efforts to take care of the debts when he became finally able to do so. Where (as here) there is insufficient evidence of repayment efforts after the conditions that contributed to an applicant's delinquent debts have passed, the Appeal Board has cautioned against crediting the applicant with either non-recent financial difficulties (MC 1 of the Guidelines) or excusing him from addressing his delinquent debts (even those accrued because of extenuating circumstances). *See* ISCR Case No. 03-01059 (September 2004).

Taking into account all of the circumstances surrounding Applicant's 1998 failed Chapter 13 petition bankruptcy (*see* ISCR Case No. 02-21045 (December 2004) and his still unresolved delinquent debts, the absence of sufficient attention he has shown with his debts in the past, his repeated intentions to avoid repaying his delinquent debts, and his still unresolved debt situation, Applicant fails to mitigate the government's security concerns at this time. Unfavorable conclusions warrant, accordingly, with respect to SOR subparagraphs 1.a through 1.m of the allegations covered by Guideline F.

Falsification issues

Posing potential security concerns, too, are Applicant's documented omission of his covered Chapter 13 bankruptcy petition. So much trust is imposed on persons cleared to see classified information that judgement lapses associated with inferred deliberate omissions become security significant. Applicant's omission of his Chapter 13 petition was deliberate and invites application of DC 2 (falsification of a security questionnaire) and DC 3 (providing false information to an investigator) of Guidelines E covering personal conduct.

Mitigation is difficult to credit Applicant with, By failing to take advantage of any opportunities to correct his SF-86 omission before he was confronted with his credit report by an interviewing DSS agent in July 2002 (almost two years later), Applicant does not mitigate the omission of his Chapter 13 petition. Not only has our Appeal Board found the use of MC 2 of the Adjudicative Guidelines for personal conduct (isolated, corrected falsification) to be unavailable to applicants seeking mitigation by treating the omission as isolated, but it has denied applicants availability of MC 3 (prompt, good faith disclosure) as well in circumstances (as here) where the applicant has failed to take advantage of a DSS interview opportunity to voluntarily correct an omission before being confronted. *Compare* ISCR Case No. 97-0289 (January 1998) with DISCR Case No. 93-1390 (January 1995). Applicant, accordingly, may not take advantage of either MC 2 (isolated omissions) or MC 3 (prompt, good faith correction of the falsification) of the Adjudicative Guidelines for personal conduct.

Considering all of the evidence produced in this record and the available guidelines in the Directive (inclusive of the E.2.2 factors), unfavorable conclusions warrant with respect to subparagraph 1.a of 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): 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

Sub-para. 1.i: AGAINST APPLICANT

Sub-para. 1.j: AGAINST APPLICANT

Sub-para. 1.k: AGAINST APPLICANT

Sub-para. 1.l: AGAINST APPLICANT

Sub-para. 1.m: AGAINST APPLICANT

Sub-para. 1.n: AGAINST APPLICANT

Sub-para. 1.o: AGAINST APPLICANT

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Sub-para. 1.a: 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