

DATE: February 10, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-04380

DECISION 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 accrued during his four-year military tour of service. He has been unable to address these debts in the ensuing years following his discharge due to the lack of good paying work. He has failed to document any progress with his either his individual or consolidated repayment efforts. Applicant successfully refutes allegations of falsification of his security clearance application (SF-86) by a demonstrated misunderstanding of the status of his debts and the scope of his listing requirements. Nevertheless, clearance is denied.

STATEMENT OF CASE

On January 8, 2004, 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 March 3, 2004 and requested a hearing. The case was assigned to me on June 2, 2004, and was scheduled for hearing on August 12, 2004. A hearing was convened on August 12, 2004, for the purpose of considering whether it is clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of seven exhibits; Applicant relied on two witnesses (including himself) and one exhibit. The transcript (R.T.) of the proceedings was received on August 24, 2004.

PROCEDURAL ISSUES

Before the close of the hearing Applicant asked that the record be kept open to permit him time to supplement the record with documentation of payments to certain of his creditors and his new debt consolidation service. There being no objection from the Government, and for good cause shown, Applicant was granted until October 1, 2004 to supplement

the record. Department Counsel, in turn, was granted one day to respond. Applicant was later granted additional extensions of time to supplement the record, which he failed to take advantage of before the closing of the record on February 8, 2005.

SUMMARY OF PLEADINGS.

Under Guideline F, Applicant is alleged to have (a) petitioned for Chapter 7 bankruptcy relief in 1991, (b) accumulated numerous delinquent debts between 1994 and 2003 (10 in all totaling over \$3,900.00), which he has failed to pay or otherwise resolve, and (c) insufficient monthly income, as evidenced by his personal financial statement executed in September 2003, to resolve his delinquent debts. Under Guideline E, Applicant is alleged to have falsified his security clearance application (SF-86) of April 2002 by omitting his debts over 180 and 90 days delinquent, respectively. For his response to the SOR, Applicant admitted most of the allegations without explanation, denying only the allegations of falsifying his SF-86.

FINDINGS OF FACT

Applicant is a 35-year-old former security guard 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 and adopted as relevant and material findings. Additional findings follow.

After graduating from high school, Applicant incurred a number of debts he had trouble keeping up with and filed for Chapter 7 bankruptcy relief in March 1991 (*see ex. 7*). The bankruptcy court approved his discharge in July 1991 (*see ex. 8*).

Between 1994 and 1998 Applicant served on active military duty; he was honorably discharged in February 1998. While in military service, he compiled a considerable amount of additional debt, which he was unable to pay off before his discharge. Following his discharge, he encountered renewed difficulty in finding gainful employment and suspended payment efforts on his old debts. All together, Applicant accumulated 10 delinquent debts between 1994 and 2003 (totaling over \$3,900.00), which he has not been able to address with the income at his disposal.

Recently, Applicant committed to a debt consolidation service. It is not clear when he signed up with this service, or how long he has been making the \$125.00 a month payments he claims to be paying to the service: His payment documentation comprises one copied check for \$125.00 in May 2004 (*see ex. A*), but no more. His income has been spotty since his military discharge. He currently generates a little over \$1,400.00 a month from his work as a licensed barber following two years of schooling. With this income he has been able to cover his rent, necessities, and child support (initiated three to four months previous after paternity was proved), but little more with the small remainder (roughly \$300.00) he has been able to accumulate (*see ex. 2; R.T., at 55-57*). With his current debt consolidation plan, he believes he should be able to eventually pay off his old debts (*R.T., at 69-73*). However, he can provide no time table of a pay off. And with the extra post-hearing time afforded him to document any further repayment efforts, he has failed to do so.

When executing his SF-86 in April 2002, Applicant omitted most of his delinquent debts (both those over 180 days and 90 days, respectively) when answering questions 38 and 39 of the questionnaire. Applicant attributes his omissions to (a) memory failure on most of the debts that originated during his military service and (b) his belief he didn't have to list delinquent debts over seven years old (*see ex. 4; R.T., at 35-36, 64*). Due to the age of his omitted debts (over six years old) and relatively small size of the debts (all but one under \$500.00), he assures he could not remember most of them when answering questions 38 (over 180 days late) and 39 (over 90 days late). Remembering what he could without any paper work to jog his memory, he listed his tire loan when answering question 38 and his furniture loan with creditor 1.h when answering question 39.

Applicant's longstanding failure to look into the status of his debts raises some troubling due diligence concerns. The lack of due diligence by itself is not enough, however, to impute knowing and wilful falsification. Applicant's explanations of faulty memory and misunderstanding about the scope of questions 38 and 39 of his SF-86 are not inherently implausible given the relative age and small amounts of the debts at issue and his lack of a credit report or debt documentation to jog his memory on his old debts. His explanations are not disputed by the Government either:

The Government in its closing suggested his omissions were not intentional (citing his demonstration of candor in listing one of the covered debts and a previous job termination, his strong character references and his military service).

Appraising Applicant's demeanor, the age of his debts, his demonstrated honesty in providing other adverse information asked of him in his SF-86 (*e.g.*, his involuntary termination by a previous employer), the circumstances surrounding his claimed misunderstanding of the scope of the pertinent questions, and his memory limitations, he impresses as credibly mistaken about the status of his debts and the scope of the pertinent questions. Overall, Applicant's explanations for his S-F omissions are plausible enough to avert findings of knowing and wilful omission and are accepted.

Applicant is highly regarded by a close uncle (a former corrections officer of 13 years), who has known him since 1969. Applicant is reputed to be a good father who sees his daughter every other weekend and stays current with his child support payments (R.T., at 81-85).

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.

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.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's 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 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.

CONCLUSIONS

Applicant accrued considerable delinquent debt while in the military that he was unable to resolve following his discharge with the minimal income he generated from his intermittent employment opportunities. Altogether, Applicant accumulated over \$3,900.00 of assorted consumer debts, which he failed to discharge, either individually, or through initiated bankruptcy. The Government's expressed security concerns in the SOR and their evidentiary presentations center on the amount of delinquent debt he compiled between 1994 and his ensuing omissions of these debts from his pertinent answers to his SF-86.

Financial issues

Applicant attributes his financial problems to the array of debts he accumulated both before he entered the Marine Corps in 1994 (which were discharged in bankruptcy) and during his four year military tour, which he was unable to keep up with following his 1998 discharge.

Based on Applicant's considerable accumulation of delinquent debt, two of the Disqualifying Conditions (DC) of the Adjudicative Guidelines for Guideline F apply: DC E2.A6.1.2.1 (*A history of not meeting financial obligations*) and DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*). While his accrued debts are accompanied by some extenuating circumstances (*viz.*, a lack of continuous gainful employment following his military discharge), for the most part his finances have permitted modest attempts to pay on his old tax creditors from income earned from his prior jobs and his more recent barbering trade. That he has not been able to document any further progress with his creditors in the six months that have elapsed since his hearing is unclear at this point, but is apparently related to his inability to find work following his separation by the defense security service that submitted his request for clearance.

Resolution of Applicant's delinquent consumer debts is uncertain at this time. His most recent efforts to utilize the services of a debt consolidation service are not developed enough to be able to make any favorable impressions about his prospects of paying off his creditors in the foreseeable future. So, while his accrued consumer debts are extenuated to a considerable extent by his earnings limitations, enough to enable him to invoke MC E2. A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) of the Guideline, he has made too little tangible progress with resolution of his debts over the past ten years (dating to his military service) to mitigate financial concerns sufficiently to enable him to invoke MC E2.A6.1.3.1 (*The behavior was not recent*) of the Guideline.

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 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 claimed difficulties in finding good paying employment following his military discharge and his inability to document any kind of payment plan with the resources he has had available to him from his past and current work, Applicant fails to mitigate the Government's security concerns at this time. Unfavorable conclusions warrant, accordingly, with respect to subparagraphs 1.a through 1.l of 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 covered delinquent debts from the SF-86 he completed in April 2002. His omissions are, however, attributable to his mistaken uncertainty over the identity of his delinquent debts and whether they were too dated to require listing in his SF-86. Applicant's judgment lapses are not enough to impute knowing and wilful falsification under either Guideline E.

Applicant's explanations of his omissions (misunderstanding the age of his debts and the scope of required listing) 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 diligence inquiries of the state of his debts, his efforts reveal enough mistaken reliance on the unknown state of his debts and scope of required listing to enable him to refute the allegations of falsification of his SF-86 covered in subparagraphs 2.a and 2.b under 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

GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT

Sub-para. 2.a: FOR APPLICANT

Sub-para. 2.b: FOR 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