

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has a history of delinquent debts he jointly and severally accrued prior to separation from his spouse in 1996. Altogether, the debts he accumulated exceed \$8,000.00 and have not been repaid to date, save for one small creditor and a good faith payment towards a large unpaid balance on one of his major debts. While Applicant is to be encouraged in identifying and contacting his creditors in the past year, his repayment efforts remain too much a work in progress to make any safe predictable judgments at this time about his debt resolution prospects. Applicant fails to extenuate or mitigate security concerns associated with his delinquent debts. By contrast, he successfully refutes allegations of falsification of his security clearance application (SF-86). Clearance is denied.

CASENO: 03-05197.h1

DATE: 07/26/2004

DATE: July 26, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-05197

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of delinquent debts he jointly and severally accrued prior to separation from his spouse in 1996. Altogether, the debts he accumulated exceed \$8,000.00 and have not been repaid to date, save for one small creditor and a good faith payment towards a large unpaid balance on one of his major debts. While Applicant is to be encouraged in identifying and contacting his creditors in the past year, his repayment efforts remain too much a work in progress to make any safe predictable judgments at this time about his debt resolution prospects. Applicant fails to extenuate or mitigate security concerns associated with his delinquent debts. By contrast, he successfully refutes allegations of falsification of his security clearance application (SF-86). Clearance is denied.

STATEMENT OF CASE

On December 22, 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 January 21, 2004, and requested a hearing. The case was assigned to me on March 15, 2004, and was scheduled for hearing on April 8, 2004. A hearing was convened on April 8, 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 six exhibits; Applicant relied on two witnesses (including himself) and 13 exhibits. The transcript (R.T.) of the proceedings was received on April 20, 2004.

PROCEDURAL ISSUES

Before the close of the hearing, Applicant requested leave to supplement the record with documentation of payment arrangements and payment made with one of his listed creditors (creditor 1.e). There being no objections from Department Counsel, and good cause being shown, Applicant was afforded an additional 7 days to supplement the record. The Government, in turn, was afforded 7 days in which to respond. Within the time provided, Applicant supplemented the record with a cover letter and copy of a \$200.00 check to creditor 1.e. The submission is accepted without objection as Applicant's exhibit M.

SUMMARY OF PLEADINGS.

Under Guideline F, Applicant is alleged to have been accumulated delinquent debts: nine in all totaling in excess of \$11,000.00.

Under Guideline E, Applicant is alleged to have falsified his SF-86 of July 1999 by failing to disclose (a) his repossessed vehicle by creditor 1.e, (b) his debts over 180 days delinquent, and (c) his debts over 90 days delinquent.

For his response to the SOR, Applicant admitted one of his debts (his debt to creditor 1.c) and his repossession by creditor 1.e, but denied the balance of the alleged debts as debts that were not his. He claimed to have contacted these alleged creditors, several of which have removed their accounts from Applicant's credit report. Applicant denied falsifying his SF-86, claiming both the vehicle repossessed and the alleged delinquent debts were obligations that should have been taken care of by his wife in his absence, and of which he was not aware when he completed his SF-86.

FINDINGS OF FACT

Applicant is a 43-year-old functional analyst 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.

Between 1978 and 1998 Applicant served on active military duty. Applicant married W in 1979 and together they have two children (ages 16 and 18). In 1996, Applicant and W separated. Their two daughters have continued to reside with W during their separation. Applicant and W remain married despite their lengthy separation. Applicant continues to pay

the mortgage on the home that W and the children continue to reside in. He also maintains an account to receive \$413.00 bi-weekly deposits he uses to pay W to assist her and the children.

Both prior and after their separation, W opened up a number of consumer accounts that are carried jointly with Applicant (*see ex. 2*). She had Applicant's power of attorney during his military deployments, and with the power of appointment was able to open joint accounts. Applicant relied on W to pay their bills during his pre-separation deployments. Because she oft-failed to do so, a number of their accounts were charged off. W has not paid anything on these accounts that can be documented.

After receiving interrogatories from the Government in September 2003, Applicant checked his credit report for the first time in many years and informed himself of the delinquent debts listed in the SOR. He denied responsibility for any of these debts, however, and either claimed mistaken identity or W responsibility for the debts. Through his ensuing written requests to credit reporting agencies, he was able to obtain the removal of most of the listed debts from his latest credit report (*see ex. I*). Whether these debts were removed due to mistaken identity or because more than seven years have elapsed is unknown.

Applicant now acknowledges several of the listed debts in the SOR as his own. He admits responsibility for the deficiency remaining from the repossession of a leased vehicle in 1997. This debt represents the balance due on a vehicle Applicant leased for W while he was deployed in the military. W was supposed to make the monthly payments on the vehicle while he was away on deployment, but evidently did not. Creditor 1.e repossessed the vehicle in 1997, following Applicant's separation from W. That this debt was also removed from his credit report upon his request is more indicative of the debt's age (over seven years) than its belonging to someone other than Applicant.

Besides creditor 1.e, Applicant was responsible for initiating debts carrying joint and several credit card responsibility with creditor 1.b (in February 1984), creditor 1.c (in August 1994), creditor 1.f (in December 1994), and creditor 1.h (in November 1994) before his separation from W. While W might have continued to use these credit cards after her separation from Applicant, Applicant by all accounts remained jointly and severally responsible for their payment pending written notification of legal separation and renunciation of payment responsibility for any future incurred debts on the accounts. Applicant provides no proof he ever placed his creditors on notice of his separation.

By the time of his separation from W in 1996, Applicant's accrued debt with creditor 1.b was still in good standing. The account remained in good standing as of February 2000, according to Applicant's February 2000 credit report (*see ex. 6*). By January 2002, the creditor 1.b debt had been charged off. Still, Applicant remained legally responsible for this \$560.00 debt, absent notice to the creditor of his legal separation and renunciation of responsibility for future purchases.

Similarly, Applicant's accrued debt with creditor 1.e remained in good standing prior to his separation from W in 1996. Applicant had leased the vehicle in his own name for W's benefit prior to his separation from W. W retained the leased

vehicle following their separation, and Applicant understood that W would be making the required monthly payments on the vehicle (R.T., at 85-87). Because W became delinquent in her payments to creditor 1.e, the creditor repossessed the leased vehicle in 1997 (*see ex. 6*). Like creditor 1.e, Applicant's creditor 1.f debt had been charged off by February 2000 as well, according to Applicant's February 2000 credit report (*ex. 6*). This charged off debt also remains the joint and several obligation of Applicant. As for creditor 1.h, this debt was charged off in 1995, according to Applicant's February 2000 credit report, and has remained so. It is also a debt attributable to both W and Applicant, absent documented notice of Applicant's legal separation to the creditor (none of record).

The balance of Applicant's debts (*i.e.*, creditors 1.a, 1.d, 1.g and 1.I) appear to have been opened after Applicant's separation from W, without any evidenced Applicant authorization or notice, and cannot in fairness be attributed to Applicant. While the possibility exists that these debts belong to neither W nor Applicant, Applicant has not supplied sufficient proof to support any drawn inferences of misidentification.

The debts attributable to Applicant (*viz.*, creditors 1.b, 1.e, 1.f and 1.h) account for over \$8,000.00 of the aggregate \$11,000.00 in listed delinquent debt in the SOR. Applicant has made little effort to repay any of these debts since he became manifestly aware of them in September 2003. His only evidenced payments are the agreed upon \$206.00 payment to creditor 1.c (a debt he previously disputed as his) and the \$200.00 good faith payment he recently made to creditor 1.e (*see ex. J*). Applicant continues to try to work out repayment arrangements with the rest of his creditors, but to date has been unsuccessful.

Asked to complete his SF-86 in July 1999, Applicant answered **no** to question 35 (inquiring about repossessions in the past seven years). Applicant attributed his omission to memory lapse and confusion over primary responsibility for the debt after his separation from W in 1996. Applicant's explanations are credible enough to warrant acceptance.

In answering his July 1999 SF-86, Applicant also answered **no** to question 38 (debts over 180 days delinquent) and question 39 (debts over 90 days delinquent). In so answering, Applicant omitted, *inter alia*, debts jointly and severally incurred by Applicant and W prior and during their separation (*viz.*, as to creditors 1.a through 1.I). Applicant has continued to dispute each of these debts, claiming they were either debts his wife assumed responsibility for or are unaccounted for. While most of these debts are attributed to him by virtue of his continued joint and several liability to the creditors, their delinquent status was not known to Applicant of their delinquent status until he obtained a copy of his credit report in 2003 (R.T., at 65-67). No inference of knowing and wilful omission may be fairly attributed to Applicant based on his sincere, but mistaken, understanding at the time he completed his SF-86.

Applicant has received excellent performance marks with his employer in all of these rated categories in his performance evaluation and by all accounts is well regarded by his superiors and coworkers (*see ex. L*).

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

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 and his spouse accrued considerable delinquent debt prior to their separation in 1996. The debt was jointly and severally created either through Applicant and his wife directly or through W's use of the power of appointment Applicant gave to W during his military deployments. Altogether, Applicant accumulated over \$8,000.00 of his listed \$11,000.00 debt prior to his 1996 separation. Applicant denies any legal responsibility for the debt created after his separation from W, a claim the Government questions, absent creditor documentation. The Government's security concerns center on the amount of delinquent debt he compiled between 1994 and 1999 and his ensuing omissions of these debts from his pertinent answers to his SF-86.

Financial Issues

Relying on his spouse to take care of the credit accounts initiated before their separation in 1996, Applicant failed to follow-up to ensure W was paying the debts he was jointly and severally liable for. Most of the aggregate listed debt (over \$8,000.00) in the SOR remains the joint and several responsibility of Applicant. Together, the debts comprising aggregate delinquent debt attributed to Applicant as well as W represent over 70 per cent of the accrued debt write off. 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).

While Applicant's accrued debts are accompanied by some extenuating circumstances (*viz.*, reliance on W to pay the debts during his frequent deployments abroad and his ensuing separation), Applicant may not escape responsibility for payment of his debts for so long as he remained jointly and severally responsible. He had a duty to keep himself informed of the status of his debts by checking periodically with W, and if unsuccessful, by ordering his credit report. Applicant appears to have chosen neither of these options before his receipt of the Government's interrogatories in September 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 separation from W does not excuse his failure to monitor the status of the debts assumed in his name before his separation. Extenuation is not, accordingly, demonstrated sufficiently to invoke MC 3 (conditions largely beyond the person's control) of the Guidelines. And while he has paid one of the debts and made a payment on another, his overall repayment efforts remain a work in progress and insufficient at this time to invoke any of the mitigating conditions of the Adjudicative Guidelines, primarily MC 6 (initiated good-faith effort to repay overdue creditors) based on his repayment efforts. The Appeal Board has counseled against according much weight to belated efforts to address delinquent debts well after the security clearance process has been initiated. *See* ISCR Case No. 02-33581 (July 20, 2004). To Applicant's credit, he has since taken steps to identify his creditors and accept responsibility for some of his debts. His efforts are not of sufficient strength at this time, however, to enable him to mitigate security concerns associated with his longstanding delinquent debts.

Taking into account all of the circumstances of Applicant's accumulated debts, the absence of sufficient attention he has shown with his debts in the past, and recent efforts in identifying and addressing his debts, unfavorable conclusions warrant with respect to subparagraphs 1.b, 1.e, 1.f and 1.h as to the allegations governed by the Adjudicative Guidelines pertinent to Guideline F. Favorable conclusions warrant with respect to subparagraphs 1.a, 1.c, 1.d, 1.g and 1.i of the allegations covered by Guideline F.

Falsification Concerns

Posing potential security concerns, too, are Applicant's documented omissions of his covered repossession and delinquent debts from the SF-86 he completed in July 1999. His omissions are, however, attributable to memory lapse (as to creditor 1.e) and uncertainty over whether his other debts belonged to him when he completed his SF-86. While Applicant could reasonably have been expected to be more diligent about checking on the status of his debts with his wife and credit reporting companies before 2003, his judgment lapses are not enough to impute knowing and wilful falsification under Guideline E.

Applicant's explanations of his omissions (memory lapse and uncertainty over the payment status of his joint and several consumer obligations) 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 failing to inquire does not equate to knowing and wilful omission. Applicant's accepted memory lapse and mistaken reliance on his wife's ownership and payment responsibility for the debts in issue enable him to refute the allegations of falsification of his SF-86 covered in subparagraphs 2.a through 2.c, governed by 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: FOR APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: FOR APPLICANT

Sub-para. 1.d: FOR APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

Sub-para. 1.f: AGAINST APPLICANT

Sub-para. 1.g: FOR APPLICANT

Sub-para. 1.h: AGAINST APPLICANT

Sub-para. 1.i: 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 not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley

Administrative Judge