

DATE: January 12, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-10880

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 bankruptcy (discharged in 1997) followed by additionally incurred delinquent debts between 1997 and 2000 during periods of intermittent unemployment and problems with his child support. The listed debts exceed \$14,000.00. His delinquent debts despite remain significant amidst continued Applicant resistance to addressing his debts despite his reported ability to do so with the net monthly income available to him since at least February 2003. Clearance is denied.

STATEMENT OF CASE

On April 12, 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 May 3, 2004 and requested a hearing. The case was assigned to me on May 5, 2004, and was scheduled for hearing on June 4, 2004. A hearing was convened on August 24, 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 one witness (himself) and 16 exhibits. The transcript (R.T.) of the proceedings was received on September 1, 2004.

PROCEDURAL ISSUES

Before the close of the hearing, Department Counsel moved to amend the SOR as follows: subparagraph 1.1 to add the words after the words "in the approximate amount of \$2,832.44:" Beginning with a new sentence, "A default judgment was taken against Applicant by the creditor." There being no objections from Applicant, and good cause being shown,

Department Counsel's amendment motion was granted. Applicant was permitted to answer subparagraph 1.l, which he admitted.

Prior to the close of the hearing, Applicant requested the record be kept open to permit him an opportunity to supplement the record with documentation of charging of an Applicant checking account, credit reports showing two listed accounts as one, payment of one of the listed accounts and the judgment regarding creditor 1.l. For good cause shown, Applicant was granted seven (7) days to supplement the record. The Government, in turn, was afforded five (5) days to respond. Applicant failed to supplement the record within the time permitted.

SUMMARY OF PLEADINGS.

Under Guideline F, Applicant is alleged to have accumulated delinquent debts, 12 in all on debts that total in excess of \$14,000.00, and to petitioned for Chapter 7 bankruptcy in October 1996, for which he was discharged in January 1997.

For his response to the SOR, Applicant admitted some of his debts (*i.e.*, those with listed creditors 1.d through 1.h and 1.l) while denying the others. Specifically, he denied any delinquent debts with creditors 1.a, 1.b, 1.c, 1.i, 1.j, and 1.k. He admitted petitioning for Chapter 7 bankruptcy in 1997, for which he was discharged.

FINDINGS OF FACT

Applicant is a 44-year-old data monitor 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.

Applicant and his wife accumulated considerable consumer debts prior to their divorce in January 1996. Under the terms of their divorce decree, Applicant was assigned responsibility for taking care of all of the joint marital debts incurred during the term of the marriage, and hold his wife harmless therefrom (*see ex. C*). Among those assumed debts was the loan on their family vehicle, which the wife was granted possession as a part of the couple's pre-trial stipulation (*see exs. 2 and C*). Applicant was also ordered to pay \$360.00 a month in child support for his young daughter, for whom his wife was awarded custody (*see ex. C*). The wife, though, was assigned responsibility for maintaining a policy of medical/hospitalization insurance for bearing responsibility for one-half of the uninsured medical, hospitalization, dental, prescription drug and physician's expenses reasonably incurred on behalf of their child.

Soon after his divorce had become final, Applicant began falling behind in paying the debts assigned to him to discharge under his divorce decree. After struggling for a while to pay his debts, he elected to petition for Chapter 7 bankruptcy as a means to discharge his old debts (*see exs. 2 and 6*). Applicant received his bankruptcy discharge in January 1997 (*ex. 6*).

Following his bankruptcy discharge, Applicant persevered in working, paying his child support, and generally staying current with his debts and expenses. After he was terminated from his employer the first time (in July 1998), he found work with another company and made intermittently before being laid off the following year. For the ensuing three months he was unemployed, he couldn't pay anything on either his debts or his child support (*see exs. 1 and 2*). When he resumed work with the same employer in 1999, he made some payment progress with his creditors. However, he stopped making payments on his debts even before he was terminated by the same employer for the second time: in April 2001 (*see ex. 1; R.T., at 154-55*).

Applicant joined a new employer in August 2001 but continued to avoid paying anything on his old debts or child support (even after returning to work), despite a reported monthly remainder of \$367.00 (*see ex. 2; R.T., at 165*). Since February 2003, he has been able to resolve his child support arrearage and secure financial relief from withholding on his child support (*see ex. P; R.T., at 140-42*), while gaining custody of his daughter in April 2004 (*see ex. M*).

Altogether, Applicant has accrued over \$14,000.00 on 11 debts since his emergence from Chapter 7 bankruptcy in January 1997. His debts include a substantial deficiency on a repossessed vehicle in June 2000, numerous medical debts, and assorted consumer debts he claims he either paid or endorsed receipted insurance checks over to his wife for payment to the covered medical providers (*R.T., at 130-35*).

Despite past promises to address his creditors (*see ex. 2*), Applicant has continued to deny responsibility for most of his debts (attributing them to his ex-spouse) and failed to follow through on writing to his creditors or seeking or resolving them through debt consolidation or a second bankruptcy. While claiming multiple assignments of his debts to unscrupulous collection agencies and past disputes over his debts with the creditors, he has made no effort to inform credit reporting agencies of his debt disputes (R.T., at 145-46). To date, Applicant has failed and refused to make any payments or initiate any written inquiries to any of the listed creditors in the SOR, or provide any documentation of debt reconciliation with any of his listed creditors, despite an increased monthly remainder (raised to \$517.00 in November 2003) and presented opportunities to do so (R.T., at 147-66).

While Applicant contacted a credit counseling service to explore debt consolidation, he has not followed up on his initial inquiry and for lack of any available loan resources has not signed up with any debt consolidation service to date (R.T., at 163-64). He insists he does not have a \$517.00 monthly remainder every month, as reported, but provides no monthly bank statements or revised documentation of any kind to corroborate his claims. Without more in the record to back his limited resource claims, his reported \$517.00 net monthly remainder must be accepted as generally available to him, at least for the relevant period spanning November 2003 and August 2004 (*see ex. 3*; R.T., at 165-66).

Applicant lives frugally and spends most of his available resources on his current obligations and caring for his daughter and adopted child. He is considered dependable and responsible by his immediate supervisor (ex. L) and was honorably discharged from his military service in May 1997 (*see ex. O*).

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 1. The behavior was not recent.

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).

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 debt between 1997 and 2000 following his divorce and emergence from bankruptcy, which he has only minimally addressed despite promises made to identify and pay his debts in a 2003 DSS interview. Applicant's listed delinquent debts (12 in all) include an entered judgment in behalf of one of his major creditors and total over \$14,000.00, which have for the most part been charged off with no manifest intention to address or follow up on within the past six years.

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). 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 periodic unemployment experiences, while problematic, were relatively short in duration and do not appear to have inhibited his ability to address his debts after he returned to full time employment. Significant delinquent debt attributable to an applicant that is neither extenuated nor mitigated by good-faith resolution raises implicit 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 extenuation nor mitigation is demonstrated sufficiently to enable him to invoke either MC 3 (conditions largely beyond the person's control) or MC 6 (initiated a good-faith effort to repay overdue creditors) of the Guideline, based on either his financial circumstances in 1997 to 1999, or his repayment efforts after he had returned to full-time employment.

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 1997 bankruptcy (*see* ISCR Case No. 02-21045 (December 2004) and accumulated debts following his bankruptcy discharge, the absence of sufficient attention he has shown with his debts in the past, and his repeated intentions to avoid repaying his delinquent debts, Applicant fails to mitigate the Government's security concerns at this time. Unfavorable conclusions warrant, accordingly, with respect to subparagraphs 1.a through 1.m of the allegations governed by the Adjudicative Guidelines pertinent to Guideline 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): 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

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