

KEYWORD: Financial

DIGEST: Applicant has a history of delinquent debts, five in all, that exceed \$8,500.00. His delinquent debts have been paid to the satisfaction of three of his five listed creditors, and the remaining two may potentially be set off against Applicant claims in two pending class action suits against his remaining two listed creditors. Applicant is successful in mitigating the Government's security concerns arising out of his reported delinquent debts. Clearance is granted.

CASENO: 03-12685.h1

DATE: 03/28/2005

DATE: March 28, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-12685

**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, five in all, that exceed \$8,500.00. His delinquent debts have been paid to the satisfaction of three of his five listed creditors, and the remaining two may potentially be set off against Applicant claims in two pending class action suits against his remaining two listed creditors. Applicant is successful in mitigating the Government's security concerns arising out of his reported delinquent debts. Clearance is granted.

**STATEMENT OF CASE**

On March 22, 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 April 5, 2004, and initially requested his case be decided on the written record. Subsequently, he requested a hearing, which was administratively granted. The case was assigned to me on November 9, 2004, and was scheduled for hearing on December 1, 2004. A hearing was convened on December 1, 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 eight exhibits; Applicant relied on one witness (himself) and no exhibits. The transcript (R.T.) of the proceedings was received on December 8, 2004.

### **PROCEDURAL ISSUES**

Before the close of the hearing, Applicant requested leave to keep the record open to enable him to supplement the record with payment documentation and resolution of his disputed debts. There being no objections from the Government, and good cause being demonstrated, Applicant was granted 20 days to supplement the record. Government, in turn was afforded two days to respond. Within the time permitted, Applicant supplemented the record with exhibits pertaining to his debts and character references, which were accepted as Applicant's exhibits A through H.

By approved agreement between the parties, the record was left open to consider additional documentation of payment of several of Applicant's listed debts. These four additional documents were initially submitted as attachments to Applicant's answer and were removed from the file (apparently without Applicant's knowledge) before the file was furnished the judge. Due to apparently mistaken assumptions of both parties, none of these detached documents were mentioned at the hearing. These documents are now offered by Applicant as post-hearing document submissions relevant to several of his listed debts (notably creditors 1.a, 1.c and 1.d). There being no objection by the Government to these four additional documents, and good cause being shown, Applicant's offered exhibits I through L were admitted.

By notice of November 24, 2004, Applicant was terminated from his position with his employer that required a security clearance. In accordance with Section 4.41 of the Directive, Applicant's application for a security clearance must be completed in accordance with the Directive's requirements.

### **SUMMARY OF PLEADINGS.**

Under Guideline F, Applicant is alleged to have accumulated delinquent debts, five in all, that exceed \$8,500.00 and include one debt (creditor 1.a) that was reduced to judgment. For his response to the SOR, Applicant denied each of the allegations.

## FINDINGS OF FACT

Applicant is a 40-year-old customer service engineer for a defense contractor who seeks a security clearance. He served in the Army National Guard between 1982 and 1992 (*see ex. 1*; R.T., at 33-34). Following his military discharge from the Guard, he enlisted in the Air Force (AF) National Guard, where he served for five years (*viz.*, between 1992 and 1997). While in the AF Guard, Applicant completed a two-year college curriculum and was awarded an Associated Arts degree (R.T., at 36-37).

After a brief period of employment with a previous employer, Applicant was laid off for several months, after having his wages and hours reduced by his employer. He married his current wife in 1998, who bore him two children. He denies any debts with the creditors listed in the SOR. Applicant's payment claims with respect to creditor 1.a are corroborated: the judgment obtained by creditor 1.a in October 2003 for \$5,387.00 was set aside by the court in February 2004. Applicant, in turn, settled creditor's 1.a debt with a payment of \$763.84 in April 2004, and received a release of judgment from the creditor (*see ex. I*; R.T., at 46). With respect to creditor 1.b (a \$1,220.00 charged-off debt), Applicant claims to have paid this creditor as well (R.T., at 46-47) and provides documentation of payment to this creditor's satisfaction (*see ex. B*).

Of the remaining three debts attributed to Applicant, Applicant claims to have paid one of these debts (creditor 1.d) and attempted to communicate with the other two, albeit unsuccessfully (R.T., at 48-50). To enable him to document his payment satisfaction with respect to two of the creditors and dispute resolution of the remaining creditor, Applicant asked for and was granted 20 days to supplement the record. With the additional documentation he is able to correlate the high amount owed the creditor as reported in his credit report in July 2001 with the amount he assures was previously taken out of his checking account in May 2001 (*compare exs. G and K with R.T.*, at 50-51).

Applicant's two remaining listed debts (creditors 1.c and 1.e) are the subject of class action suits, which included Applicant as a class member in each (*see exs. E and F*). To what extent Applicant is able to net any recovery from these class action suits is too uncertain at this time to make any safe projections (*see exs. C, F and L*).

Applicant is highly regarded for his technical skills and judgment by three of his prior employers who submitted letters of appreciation in his behalf (*see ex. H*). Applicant is credited with excellent job performance by each of these three former employers.

## **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 of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

### **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 following his discharge from the AF National Guard in 1997. Applicant's five listed delinquent debts include an entered judgment (subsequently set aside by the court) in behalf of one of his major creditors (creditor 1.a) and total over \$8, 500.00. Most of his debts have been charged off with no manifest intention by any of his creditors to 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: E2.A6.1.2 (*A history of not meeting financial obligations*) and E2.A6.1.3 (*Inability or unwillingness to satisfy debts*). While his accrued debts are accompanied by some extenuating circumstances (*viz.*, reduced hours and pay, followed by a layoff), for the most part his finances have permitted payments on his old creditors with the resources available to him.

Applicant's debts are mitigated enough, however, to enable him to take advantage of one of the mitigating conditions (MC) of the Guidelines (for financial): E2.A6.1.3.6 (*The individual initiated good-faith efforts to repay overdue creditors or otherwise resolve debts*). Application of this mitigating condition is based on his past and recent payment efforts with respect to the debts listed in the LOI. Within the time permitted to supplement the record,. Applicant is able to document payment of three of the five listed debts and possible set off of his remaining too against potential proceeds from the two class actions he is included in.

Taking into account all of the circumstances surrounding Applicant's accumulation of delinquent debts and his demonstrated efforts to pay or resolve his debts, Applicant mitigates the Government's security concerns. Favorable conclusions warrant, accordingly, with respect to subparagraphs 1.a through 1.e of the allegations governed by the Guidelines pertinent to Guideline F.

In reaching my decision, I have considered the evidence as a whole, including each of the E2. 2.1 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

## **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

