

KEYWORD: Financial

DIGEST: Applicant has a history of delinquent debts he jointly and severally accrued prior to his divorce from his ex-wife in 1998. Altogether, the debts he accumulated exceed \$24,000.00 (inclusive of accumulated interest), which have not been repaid to date, save for one of his smaller creditors. While Applicant is to be commended for recent identifying and contacting his creditors, 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. Clearance is denied.

CASENO: 03-13281.h1

DATE: 08/30/2004

DATE: August 30, 2004

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 03-13281

**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 his divorce from his ex-wife in 1998. Altogether, the debts he accumulated exceed \$24,000.00 (inclusive of accumulated interest), which have not been repaid to date, save for one of his smaller creditors. While Applicant is to be commended for recent identifying and contacting his creditors, 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. Clearance is denied.

### **STATEMENT OF CASE**

On February 9, 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 February 25, 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 June 4, 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 five exhibits; Applicant relied on three witnesses (including himself) and 10 exhibits. The transcript (R.T.) of the proceedings was received on June 15, 2004.

### **SUMMARY OF PLEADINGS**

Under Guideline F, Applicant is alleged to have incurred nine delinquent debts totaling in excess of \$19,000.00.

For his response to the SOR, Applicant admitted each of the alleged debts, with the exception of the alleged debt to creditor 1.e. Applicant claimed one of the debts (creditor 1.a) was the responsibility of his ex-wife who did not take care of it. As for the remaining admitted debts, he accepted responsibility for them and claimed to be making arrangements to pay them.

### FINDINGS OF FACT

Applicant is a 33-year-old video technician 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.

During his previous marriage, Applicant and his wife at the time accumulated a number of credit card and assorted consumer debts. In addition, Applicant accrued a number of student loans guaranteed by the USDoE during his two years at a local technical school. These debts exceeded \$15,000.00, and with accumulated interest total in excess of \$19,000.00, which for the most part had not been addressed prior to Applicant's receiving the SOR in February 1994.

Applicant attended technical college between 1994 and 1996 and received student loans approximating \$15,000.00. Since graduating he has made periodic payments of \$50.00 but never made sufficient progress with his loans to avert delinquent status. Most of Applicant's consumer debts became delinquent prior to his divorce from his first spouse in 1998. While Applicant claims his ex-spouse bore responsibility for some of his creditor card debt (*e.g.*, creditor 1.d), he provides no documentation of his ex-spouse's fixed agreement or obligation to bear responsibility. He provides no documentation either of any creditor waiver of his joint and several responsibility for the debts. His prior effort in 2001 to consolidate a payment plan with his smaller creditors with a reputable credit consolidation firm terminated after he was unable to keep up with the established \$150.00 monthly payments to the consolidation firm. While he briefly considered bankruptcy, he decided against taking this course of action.

After receiving the SOR, Applicant contacted several of his listed creditors to arrange payments. Creditor 1.d offered to settle its \$1,376.00 debt for \$725.42, payable in one lump sum on or before March 29, 2004 (*see ex. B*). To date, Applicant has not accepted the creditor 1.d settlement offer; he continues to talk to the creditor in the hopes of working out an acceptable payment plan. While he documents payment of one of his smaller creditors (creditor 1.e) with a

\$55.00 payment, he fails to provide any documentation of payment to any of his remaining debts, some of which are quite small (R.T., at 47-49). He assures, though, that he has paid his other small consumer debts: those with creditors 1.f through 1.i (R.T., at 47-49). Because of the small size of these debts it is not inconceivable that Applicant could have paid these debts and have no paperwork to cover his payments. However, they are still reflected as unpaid on Applicant's credit report of March 29, 2003. Without at least an updated credit report from Applicant that reflects the deletion of these accounts too many doubts exist to warrant drawn inferences these debts have been paid.

In March 2004, Applicant entered into a repayment agreement with the USDoE that calls for monthly payments on his delinquent loans of \$150.00 a month. He claims to have made his monthly payments but provides no documentation to support his payments (R.T., at 54-55). Applicant is credited with making these payments.

Applicant has been affiliated with his current defense contractor since 2001 as a video technician and nets approximately \$39,000.00 a year in income. His current spouse of more than three years (since September 2001) nets \$1,200.00 a month or more than \$14,000.00 a year (R.T., at 31). Between them, they have five children to support: three from his wife's former marriage who live with them in the home and two of Applicant's who currently reside with his ex-spouse. Applicant pays \$12,000.00 a year in child support to his ex-wife, which leaves him and his wife with about \$41,000.00 in net disposable income (*see* ex. 3; R.T., at 44-45).

Applicant is credited by his customers with his defense customer with providing high quality training video and has received certificates commending his outstanding video work (*see* exs. I and J). His facility coordinator describes him as highly responsible in his handling of valuable audio visual equipment in his employer's facility (R.T., at 33-37). Applicant appears to be well regarded by his employer.

## **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 affluence 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 6. The individual initiated good-faith efforts to repay overdue creditors or otherwise resolve debts.

## 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 and his spouse accrued considerable delinquent debt prior to their divorce in 1998. The debts were jointly and severally created for the most part, save for his student loans. Altogether, Applicant accumulated over \$24,000.00 (including accrued interest on his debts). The Government's security concerns center on the amount of delinquent debt he compiled between 1994 and 1997.

Much of the aggregate listed debt (over \$19,000.00) in the SOR remains the joint and several responsibility of Applicant. Some (his student loans in particular) were always Applicant's individual responsibility, which he does not disclaim. 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 his wife to take care of some of the credit card debt following their divorce in 1998), 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 take care of the debts initiated jointly with his ex-wife, in the event she did not. Aside from making occasional undocumented payments to his student loan creditor and taking care of one of his small creditors, he has failed to take any meaningful steps to address his accumulated debt delinquencies.

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 from his ex-spouse does not excuse his failure to monitor the status of the debts assumed in his name before and after his divorce from his ex-wife. 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 smaller debts and has made several payments to the USDOE under a recent repayment agreement, 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.a through 1.d and 1.e through 1.i of 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: FOR 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

**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