

KEYWORD: Financial

DIGEST: Applicant has a history of delinquent debts he incurred between 1986 and 1993 that he discharged in bankruptcy in 1995 following a bitter divorce and ensuing layoff. He accrued additional judgments and debts, however, following his bankruptcy that he has not been able to address in any manifest way. The latest judgment/delinquent debt total exceeds \$10,000.00 and still remains significant. While Applicant is to be encouraged to continue to explore ways to resolve his debts, he has made too little documented effort to date to resolve his debts to facilitate any safe predictable judgments at this time about his debt resolution prospects. Applicant fails to mitigate security concerns associated with his delinquent debts. Clearance is denied.

CASENO: 03-17904.h1

DATE: 07/28/2005

DATE: July 28, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-17904

**DECISION OF ADMINISTRATIVE JUDGE**

**ROGER C. WESLEY**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of delinquent debts he incurred between 1986 and 1993 that he discharged in bankruptcy in 1995 following a bitter divorce and ensuing layoff. He accrued additional judgments and debts, however, following his bankruptcy that he has not been able to address in any manifest way. The latest judgment/delinquent debt total exceeds \$10,000.00 and still remains significant. While Applicant is to be encouraged to continue to explore ways to resolve his debts, he has made too little documented effort to date to resolve his debts to facilitate any safe predictable judgments at this time about his debt resolution prospects. Applicant fails to mitigate security concerns associated with his delinquent debts. Clearance is denied.

**STATEMENT OF CASE**

On January 15, 2004, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant. The SOR 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, and recommended referral to an administrative judge for determination whether clearance should be granted or continued.

Applicant responded to the SOR on April 17, 2004, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on July 21, 2004. Applicant failed to respond to the FORM within the 30 days afforded him to provide supplemental documentation regarding the raised issues. The case was assigned to me September 16, 2004.

**SUMMARY OF PLEADINGS**

Under Guideline F, Applicant is alleged to have accumulated a number of outstanding judgments and delinquent debts: two judgments for \$402.99 and \$794.56, respectively, and eleven debts in excess of \$9,500.00. Additionally, Applicant is alleged to have petitioned for Chapter 7 bankruptcy in February 1995 on assets of \$1,450.00 and liabilities of \$36,428.00.

For his response to the SOR, Applicant admitted each of the allegations with explanations of the circumstances surrounding a bitter previous divorce and an ongoing divorce that has consumed his funds and prevented him from petitioning for another divorce.

### **FINDINGS OF FACT**

Applicant is a 53-year-old machinist 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 1986 and 1993, Applicant and his first wife accumulated considerable debts. After surviving a bitter divorce in 1993, Applicant was laid off from the job he had worked at for many years. Returning to work and remarrying in 1994, Applicant accumulated additional debts, which he could not pay and still take care of the marital debts he became responsible for. Unable to handle his accumulated debts, he petitioned for Chapter 7 bankruptcy in February 1995. In his bankruptcy petition, he listed assets of about \$1,450.00 and liabilities of about \$36,428.00. Applicant received his bankruptcy discharge in April 1995 (*see ex. 6*).

Following his bankruptcy, Applicant was hopeful his finances would improve. This changed after his hourly wages were reduced from \$19.00 an hour to just \$10.00 an hour (*ex. 3*). Between 1995 and 2001, Applicant accumulated numerous post-bankruptcy debts that he could not discharge with his available income. Among the largest of his accumulated debts were two credit card accounts with one creditor (creditor 1.j and 1.k) that totaled more than \$3,000.00. Another large account (creditor 1.m) resulted from a repossessed vehicle after Applicant stopped making payments on the vehicle. Whether the debt amount associated with the creditor (creditor 1.m) in the SOR represents the balance owing on the car purchased when it was repossessed, or the deficiency following the sale of the car by repossessing creditor, is unclear.

Two of Applicant's post-bankruptcy delinquent debts are covered by judgments entered against Applicant: one in

February 2001 for the approximate amount of \$402.39 and another in May 1999 in the amount of \$794.56. Applicant acknowledges his other debts, which collectively exceed \$4,000.00. With no more than \$282.00 in wage proceeds remaining every month, Applicant has been unable to address his old debts with his available resources. In a signed, sworn statement he gave to a DSS agent in July 2003, he acknowledged his excessive debts and his consideration of a new bankruptcy filing. He assured that by the end of January 2004, and no later, he either would have commenced paying on his debts or he would have decided to file for bankruptcy.

Based on the reported status of his debts in his latest credit report (*see ex. 6*), and acknowledged in his answer, Applicant has neither started paying on his outstanding judgments and delinquent debts nor initiated bankruptcy proceedings to discharge them. He provides no evidence of payment efforts, payment plans or updated explanations why he has not addressed his outstanding judgments and delinquent debts. There is nothing produced in the administrative record either to indicate Applicant has experienced any long-term unemployment, underemployment, or unexpected medical emergency since joining his current employer in July 2001.

## **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.

### **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 debts between 1986 and 1993 during his first marriage, which he discharged in bankruptcy in 1995. After remarrying and experiencing a layoff, he incurred still additional financial problems with his bills. Among his additional debts, two resulted in judgments (in 2001 and 1999, respectively), and eleven more became delinquent and were either charged off or placed in collection. These outstanding judgments and delinquent debts, which total more than \$10,00.00, have not been substantively addressed by Applicant since his accounting to a DSS agent in July 2003. They remain of security concern to the Government.

Despite his more recent assurances to either begin paying on his judgments and debts or pursue bankruptcy, Applicant remains obligated to all of the creditors listed in the SOR. On this record, two of the Disqualifying Conditions (DC) of the Adjudicative Guidelines for financial considerations apply: E2.A6.1.2.1 (*A history of not meeting financial obligations*) and E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*).

While Applicant's accrued debts are accompanied by some extenuating circumstances (*viz.*, two divorces, lack of steady

good paying work following his layoff, and ensuing lower paying work), he has made no visible headway in paying or otherwise resolving his debts (even modestly) with the resources reportedly available to him since July 2001 from his work with a DoD contractor. If he has made any payments, or entered into any payment plans, he has provided no record proof.

Applicant's debts are neither extenuated nor mitigated sufficiently to enable him to take advantage of any of the mitigating conditions at this time. His problem divorces and periods of unemployment and underemployment preceding and following his 1995 bankruptcy, while problematic for him at the time do not appear to have been so prolonged as to preclude his addressing his delinquent debts following his emergence from bankruptcy. Extenuation is not demonstrated sufficiently to enable him to apply E2.A6.1.3.3 (*The conditions that resulted in the behavior were largely beyond the person's control*) of the Guideline. Applicant's repayment suggestions are insufficient to apply any of the mitigating conditions of the Guidelines, primarily E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) based on his lack of manifest repayment efforts to date.

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). Also, where there is insufficient evidence of repayment efforts (as here) 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 (E2.A6.1.3.1, *The behavior was not recent*) or isolated financial difficulties (E2.A6.1.3.2, *It was an isolated incident*) of the Guidelines. Nor do Applicant's income limitations furnish excuse 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 of Applicant's accumulated debts, the absence of sufficient attention he has shown with his debts in the past, and the absence of any manifest current payment plans in addressing his debts, unfavorable conclusions warrant with respect to subparagraphs 1.a through 1.n of Guideline F.

In reaching my decision, I have considered the evidence as a whole, including each of the E 2.2.2 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

Sub-para. 1.n: 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

