

KEYWORD: Financial

DIGEST: Applicant has a history of bankruptcy (discharged in 1998) followed by additionally incurred delinquent debts between 1998 and 2002 during periods of intermittent underemployment and unemployment while under a medical disability, child support burdens, and family medical expenses. The listed unpaid debts exceed \$15,000.00, and are compounded by a subsequent deficiency on a vehicle repossession in 2002. His delinquent debts remain significant with still uncertain repayment prospects to warrant crediting Applicant with successful mitigation at this time. Clearance is denied.

CASENO: 03-18576.h1

DATE: 03/31/2005

DATE: March 31, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-18576

**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 bankruptcy (discharged in 1998) followed by additionally incurred delinquent debts between 1998 and 2002 during periods of intermittent underemployment and unemployment while under a medical disability, child support burdens, and family medical expenses. The listed unpaid debts exceed \$15,000.00, and are compounded by a subsequent deficiency on a vehicle repossession in 2002. His delinquent debts remain significant with still uncertain repayment prospects to warrant crediting Applicant with successful mitigation at this time. Clearance is denied.

### STATEMENT OF CASE

On August 24, 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 September 9, 2004, and requested a hearing. The case was assigned to me on November 8, 2004, and was scheduled for hearing on November 30, 2004. A hearing was convened on November 30, 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 two witnesses (including himself) and eight exhibits. The transcript (R.T.) of the proceedings was received on December 7, 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 the way Applicant makes payment on the home purchased by his father in Applicant's behalf. There being no objection from the Government, and good cause being demonstrated, Applicant was granted additional time to supplement the record. Within the time permitted, Applicant supplemented the record with exhibits pertaining to his debts, military discharges, payment arrangements with his father-in-law, medical disability benefits award from the VA, and accrued family medical expenses, which were accepted as Applicant's exhibits I through R.

## **SUMMARY OF PLEADINGS.**

Under Guideline F, Applicant is alleged to have (a) accumulated delinquent debts with eight different creditors, that exceed \$16,000.00 and include two creditors who repossessed vehicles belonging to Applicant and (b) petitioned for Chapter 7 bankruptcy in August 1998, listing assets of \$5,900.00 and liabilities of \$46,373.33, and receiving his bankruptcy discharge in November 1998.

For his response to the SOR, Applicant admitted each of the allegations, save for his being indebted on a repossessed vehicle in April 2002. He provided no explanations for any of his answers.

## **FINDINGS OF FACT**

Applicant is a 34-year-old training specialist 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.

After completing one four-year tour of active duty with the Army in 1992, Applicant re-enlisted and later received a

medically-related discharge in May 2000. Before his military discharge in May 2000, Applicant and his first wife (W1) encountered marital difficulties and initiated divorce proceedings. Delinquent in their debts, facing monthly child support payments, and unable to agree on any allocation plan for dividing their debts, they filed for Chapter 7 bankruptcy protection in August 1998, listing assets of \$5,900.00 and liabilities of \$46,373.33 (*see ex. 2; R.T., at 41-42*), and was granted a general discharge in November 1998.

After completing his joint bankruptcy, Applicant hoped to get a fresh start with his finances. Instead, he became involved in a service-related accident that required treatment for back and ankle injuries. His medical problems resulted in increased non-covered medical expenses that only compounded his continuing financial problems. Uncertain at the time what disability rating Applicant would be assigned by VA, the Army granted him an advance just after his medical discharge (in July 2000) of \$48,081.60, which it characterized as severance pay (*see ex. P; R.T., at 53*). Following his discharge, the VA conducted an evaluation of Applicant's disability and arrived at a combined evaluation of 60 per cent, which it used to calculate his monthly disability allowance (*see exs. P and R; R.T., at 53-54*). Before Applicant could receive his monthly disability allowance, though, governing law required VA to hold back monthly payments until such time as his entire severance payment was recouped. Recoupment was completed in January 2005, and Applicant received his first monthly disability payment from VA in February 2005 in the amount of \$1,090.00 (*see ex. P*).

Faced with a continuing medical disability following his military discharge in May 2000 and a marriage to his second wife (W2), and child support obligations, Applicant encountered difficulty finding full time career opportunities. He worked as a claims adjuster for a local insurance company for a little over a year before joining a local car dealership as a new car salesman in September 2001, each time making much less than what he was accustomed to netting in the Army (*R.T., at 37-39*). In the meantime, he and W2 over a nine-month period spent their entire \$48,081.00 disability allowance on assorted merchandise (*e.g., furniture, a \$48,000.00 minivan, clothing for his wife and a down payment of \$6,800.00 on some land purchased by his father-in-law, a vacation and reestablishing credit with some of his credit card accounts* (*see ex. O; R.T., at 54*).

After making payments of about \$7,000.00 on a minivan he and W2 had purchased earlier for about \$24,000.00, Applicant and his wife stopped making payments on the vehicle in early 2002 due to income shortages and the press of other financial priorities (*R.T., at 97*). By March 2002, the car lender wrote off the debt, and prepared to recover the car as a repossession. Knowing he was facing a major deficiency from the letter he received in September 2002 from the lender (*R.T., at 95*) advising him of what the car brought at auction (around \$9,000.00), Applicant and W2, (with the help of his mother as a co-signer), nonetheless, bought a new SUV in October 2002 from the dealership he was employed by, at a cost of around \$48,000.00 (*R.T., at 72*). Applicant was notified in December 2002 of a deficiency on the minivan (around \$12,000.00), which neither he nor his wife have paid on (*R.T., at 103-04*). The SUV they purchased in October 2002 was also repossessed (believed to be around October 2003) after W2 lost her job and she and Applicant could no longer keep up with these payments either. The vehicle was later sold at auction for a discounted price, leaving a substantial deficiency. Applicant and the car lender ultimately settled on a \$7,000.00 deficiency with payments of \$200.00 a month to pay off the agreed balance (*R.T., at 99, 109-112*).

Besides the deficiencies owed on his two car repossessions following his military discharge, Applicant encountered continuing child support (over \$600.00 a month enforced through withholding ordered in July 2002) and difficulties meeting his other debts. Although he disputes the amounts owing on some of his listed debts in the SOR, he acknowledges he is still indebted to creditor 1.b (for about \$400.00), to creditor 1.c (for about \$1,000.00), to creditor 1.d for about \$1,300.00 (following a substantial reduction in the debt through garnishment), and to creditor 1.e (for about \$400.00).

With the benefit of his increased income from his current employer (around \$36,000.00 annually), Applicant has been able to make visible progress in staying current with his child support and current living expenses (including the rent he pays to his father-in-law) on the home his father-in-law purchased in his behalf (*see* ex. O; R.T., at 43-44). He has been able to take care of the little bills (such as, *e.g.*, creditors 1.e and 1.f) and has begun to focus on resolving his larger debts (*see* exs. M and N; R.T., at 44). With the \$289.00 monthly garnishment taken every month from his pay check, he has been able to reduce creditor 1.d's debt from over \$4,200.00 to a little over \$1,300.00 (*see* ex. G; R.T., at 44-46).

Still, Applicant continues to encounter major expenses on medications for W2 and his step son, which their current insurance does not cover under their \$3,000.00 deductible (*see* ex. L; R.T., at 49-51). He estimates he still owes in excess of \$24,000.00 to his listed creditors, inclusive of the SUV deficiency that was not specifically alleged in the SOR. Broken down, he still owes creditors 1.a (in excess of \$12,000.00) and 1.h on the car repossession deficiencies, as well as creditor 1.b (around \$400.00), creditor 1.c (over \$1,000.00), creditor 1.d (over \$1,300.00), and creditor 1.e, which he initially disputed (nearly \$400.00). Only his debts to creditors 1.f, 1.g and 1.h warrant crediting with payment (*see* exs. 2 and M).

Applicant does show his income to be improving now that he is drawing his monthly disability payments from the VA (*see* exs. N and P). And he is making steady progress in keeping his rental payments current with his father-in-law.

### **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 comes to these proceedings with a history of Chapter 7 bankruptcy relief during his military service and subsequently accrued delinquent debts following his discharge in 2000 for medical disability reasons. Applicant's eight listed delinquent debts include substantial deficiencies on two vehicle repossessions and debts on credit card and utility accounts and total over \$15,000.00. While the second listed deficiency (creditor 1.h) has since been paid off, Applicant has accumulated a third major deficiency on a repossession of a purchased SUV in October 2002.

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.*, medical disability and reduced hours and pay, followed by a layoff, and ordered child support withholding), for the most part his troubles were the result of trying to live beyond his means. Finances available to him, beginning with his large disability advance in 2000, have generally permitted him to make some payments on his old creditors with the resources available to him. This he has been doing with several of his creditors. Most of his debts, however, remain unaddressed.

Extenuating circumstances account for some of Applicant's financial difficulties over the past 20 years (both before and subsequent to his medical discharge from the Army). To this extent, Applicant's debts are extenuated enough to enable him to take advantage of one of the mitigating conditions (MC) of the Guidelines (for financial): E2.A6.1.3.3 (*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)*). Application of this mitigating condition is based on his past and recent payment efforts with respect to four of the debts listed in the SOR and the more recent deficiency he has been making payments on. Within the time permitted to supplement the record, Applicant is able to document payment of three of the eight listed debts (*i.e.*, creditors 1.f, 1.g, and 1.h).

Extenuating circumstances associated with Applicant's medical disability, loss of income and mounting medical expenses do not account for all of Applicant's financial difficulties. Some of his difficulties derive from poor choices and imprudent managing of his disability severance payment and his car purchases. Payment of his delinquent debts continues to be a work in progress that can be expected to take several years to accomplish, based on his repayment initiatives to date and the exhibited resources he and W2 have available to them.

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 mitigation of past financial difficulties under E2.A6.1.3.1 (*The behavior was not recent*) 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 1998 bankruptcy (*see* ISCR Case No. 02-21045 (December 2004) and accumulated debts following his bankruptcy discharge and the absence of sufficient attention he has shown with some of his major debts in the past, it is too soon to credit Applicant with successful mitigation of the Government's security concerns at this time. Unfavorable conclusions warrant, accordingly, with respect to subparagraphs 1.a through 1.e and 1.I of the allegations governed by the Adjudicative Guidelines pertinent to Guideline F Applicant mitigates security concerns with respect to subparagraphs 1.f through 1.h..

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): 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: FOR APPLICANT

Sub-para. 1.g: FOR APPLICANT

Sub-para. 1.h: FOR 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