

KEYWORD: Financial

DIGEST: Applicant has a history of delinquent debts, most of which he accumulated following his military retirement in 1993. The still unpaid debts total over \$17,000.00 and still remain significant after satisfaction of his back federal taxes. While Applicant is to be encouraged in acknowledging responsibility for the debts (many of which were incurred by his wife), 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 mitigate security concerns associated with his delinquent debts. Clearance is denied.

CASENO: 03-18668.h1

DATE: 01/27/2005

DATE: January 27, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-18668

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of delinquent debts, most of which he accumulated following his military retirement in 1993. The still unpaid debts total over \$17,000.00 and still remain significant after satisfaction of his back federal taxes. While Applicant is to be encouraged in acknowledging responsibility for the debts (many of which were incurred by his wife), 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 mitigate security concerns associated with his delinquent debts. Clearance is denied.

STATEMENT OF CASE

On June 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 July 12, 2004, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on August 30, 2004. Applicant responded to the FORM within the 30 days provided him with supplemental documentation regarding his finances. The case was assigned to me October 8, 2004.

SUMMARY OF PLEADINGS

Under Guideline F, Applicant is alleged to have accumulated delinquent debts with nine different creditors in excess of \$19,000.00. For his answer to the SOR, Applicant admitted to several of the listed debts, but denied most of them, claiming disputes with one and non-responsibility for others, with explanations and attachments detailing prior payments with two of the listed creditors.

FINDINGS OF FACT

Applicant is a 48-year-old communications field engineer for a defense contractors who seeks to retain his security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference adopted as relevant and material findings. Additional findings follow.

Applicant enlisted in the Navy following his graduation from high school in 1973. His 20-year Navy enlistment included three forward deployed combat missions that earned Applicant numerous awards for his superior performance. During his last six months of his Navy enlistment, he provided pre-deployment support for which he received letters of appreciation from various ship captains. Before his retirement from the Navy in 1993, Applicant encountered no identifiable financial problems.

Following his military retirement in 1993, Applicant relocated to a western city where he could not find gainful employment for over six months and accumulated numerous delinquent consumer debts. Most of these debts he attributes to his wife's gambling problems and do not appear to be specifically related to income losses from his unemployment situation.

Several of Applicant's admitted debt delinquencies have gone unattended while Applicant seeks to accumulate more savings. While promising to contact these creditors in a signed, sworn statement he gave to an interviewing Defense Security Service (DSS) agent in May 2003, he documents past monthly payments with only three of them: creditors 1.a, 1.h and 1.i. Two of these documented payment streams are quite dated and relatively small in comparison to the overall debts owed. Only Applicant's listed IRS debt covering tax years 2000 and 2001 (*see ex. 8*) in the aggregate of \$1,860.84 reflect substantial payments that appear to satisfy his IRS obligation based on the supplied ledger of account activity.

Each of Applicant's listed debts in the SOR is covered in Applicant's credit reports (exs. 6 and 7). Addressing these individual debts, Applicant claims a longstanding dispute with creditor 1.a, which resulted in creditor 1.a's filing a civil complaint against Applicant in June 1995 and culminated in creditor 1.a's obtaining a judgment against Applicant in May 1999 in the approximate amount of \$8,016.00. After entering into a consolidation loan agreement with this creditor in March 1993 (before his military discharge) for the purpose of paying off two other creditors, Applicant made regular payments on this loan over the balance of 1993 before experiencing some hardship following his discharge. Thereafter, his payments to creditor 1.a slowed somewhat as he grappled with unemployment and his wife's gambling problems. After June 1995 creditor 1.a ceased communications with Applicant, which prompted Applicant to quit making payments altogether. Believing that creditor 1.a's judgment was taken in bad faith by the creditor and its attorneys, Applicant refuses to pay anything more on this creditor's account balance. To what extent creditor 1.a has initiated any collection efforts (if any) on its judgment, much less improper ones, is unclear from this administrative record.

Claiming settlement arrangements with creditors 1.b and 1.c, Applicant provides no documentation of any payments or payment arrangements with either of these creditors. Without documentation, his claims cannot be corroborated or accepted just on faith.

With respect to the balance of Applicant's listed debts, Applicant claims only a general willingness to make payments on them in the future. He provides no documentation that he has addressed these delinquent debts in the past, despite a stated monthly net remainder of \$1,652.00 (*see ex. 5*).

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 following his retirement from military service in 1993 and ensuing difficulties finding employment. His still unpaid delinquent debts exceed \$17,000.00 (after crediting him with payment of his back taxes to the IRS) and lack any initiated payment arrangements with his creditors.

Despite his stated intentions to address his delinquent debts, Applicant remains obligated to all but one of the creditors listed in the SOR (*i.e.*, his IRS debt, which he is credited with satisfying). 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.*, lack of steady good paying work following his military retirement in 1993), for the most part his finances have permitted modest attempts to pay on his old creditors with the resources available to Applicant after he gained steady employment with his current employer in 1994 (a period of almost 10 years).

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 six months of underemployment in 1993, while problematic, does not appear to have been so prolonged or contributive to his debt delinquencies as to preclude his addressing his delinquent debts when he gained work with his current defense contractor. To be sure, Applicant doesn't assign principal blame for his debt delinquencies to his unemployment. To the contrary, he attributes most of his debt delinquencies to his wife's gambling problem and the misbehavior of creditor 1.a's attorneys in shutting off payment discussions and proceeding to litigation.

On balance, Applicant has not demonstrated sufficient extenuating circumstances in this administrative record to enable him to invoke MC 3 (conditions largely beyond the person's control) of the Guideline. While he has paid one of the nine delinquent debts and made some past payments on two others, his overall repayment efforts remain a work in progress and insufficient at this time to invoke any of the mitigating conditions of the Guidelines, primarily MC 6 (initiated a good-faith effort to repay overdue creditors) based on his repayment efforts. The Appeal Board has counseled against according much weight to belated efforts and promises 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 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 excuse from addressing his delinquent debts (even those accrued because of extenuating circumstances). *See* ISCR Case No. 03-01059 (September 2004).

To Applicant's credit, he has since taken steps to pay off his back federal taxes and accept responsibility for some of his debts. At the same time, he provides no viable repayment plan with his current resources. And his efforts to date are not of sufficient strength 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 his continued resistance to exploring payment arrangements with creditor 1.a who holds a judgment against him on an unpaid loan consolidation debt he incurred while he was still in the Navy, unfavorable conclusions warrant with respect to subparagraphs 1.a through 1.h of the allegations governed by the Adjudicative Guidelines pertinent to Guideline F. Favorable conclusions warrant with respect to subparagraph 1.I of the allegations covered by the Guideline.

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: FOR 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