

KEYWORD: Financial

DIGEST: Applicant has a history of delinquent business and medical- related debts that culminated first in a Chapter 7 bankruptcy petition and discharge in 2001 and subsequently in additionally accrued outstanding debts and judgments following his discharge. For the most part, he has been unable to repay the debts he accrued since his bankruptcy with the remainder he has available to him and manifests no future prospects of doing so. As a consequence, Applicant fails to mitigate security concerns arising out of his reported delinquent debts. Clearance is denied.

CASENO: 04-06241.h1

DATE: 01/26/2006

DATE: January 26, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06241

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of delinquent business and medical- related debts that culminated first in a Chapter 7 bankruptcy petition and discharge in 2001 and subsequently in additionally accrued outstanding debts and judgments following his discharge. For the most part, he has been unable to repay the debts he accrued since his bankruptcy with the remainder he has available to him and manifests no future prospects of doing so. As a consequence, Applicant fails to mitigate security concerns arising out of his reported delinquent debts. Clearance is denied.

STATEMENT OF THE CASE

On July 1, 2005, 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 August 1, 2005, and requested a hearing. The case was assigned to me on October 31, 2005, and was scheduled for hearing on November 16, 2005. A hearing was convened on November 16, 2005, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of 11 exhibits. Applicant relied on one witness (himself) and one exhibit. The transcript (R.T.) was received on December 5, 2005.

PROCEDURAL ISSUES

Prior to the close of the hearing, the Government asked for leave to amend the SOR to add subparagraph 1.o to include Applicant's foreclosure of his home in November 2004, to conform with the evidence. There being no objections from Applicant, and good cause being demonstrated, the amendment was granted.

Before the close of the hearing, Applicant asked for leave to keep the record open to afford his the opportunity to supplement the record with his debt payments. There being no objection from the Government, and good cause being shown, Applicant was granted seven days to supplement the record. The Government was, in turn, afforded seven days to respond. Applicant did not supplement the record.

SUMMARY OF PLEADINGS

Under Guideline F, Applicant is alleged to have (a) petitioned for Chapter 7 bankruptcy relief in October 2000, claiming assets of \$192,663.45 and debts of \$242,281.74, and obtained a discharge in January 2001 and (b) accumulated 13 additional debts since his bankruptcy petition in excess of \$43,000.00 (including three judgments exceeding \$30,000.00).

For his response to the SOR, Applicant admitted most of the allegations, denying only his \$144.00 debt covered in subparagraph 1.c, his \$4,198.00 bank credit card debt covered in subparagraph 1.e, and the two judgments covered by subparagraphs 1.k and 1.l, respectively. He provided no explanations.

FINDINGS OF FACT

Applicant is a 56-year-old cable technician of a defense contractor who seeks a security clearance. The allegations

covered in the SOR and admitted by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

In April 1999, Applicant resigned his position with a defense contractor to start his own business. He and his wife (W) opened a coffee shop together in May 1999. To finance their business, they withdrew money from a savings account and his 401(k) retirement account, and obtained cash advances from his credit cards. They used the credit cards to buy things for the business and were able to stay current with their bills for so long as W kept her full time job (*see ex. 2*).

Unexpectedly, W's employer closed their offices in January 2000, and W lost her job. She received unemployment compensation for a little less than a year. When this ran out, she worked some at the coffee shop and searched for other work, unsuccessfully. With their finances tightening, Applicant tried part-time employment with a local casino in May 2000. But after their debts rose to over \$50,000.00 by October 2000, he and W sought legal counseling and were urged to close their business and file for Chapter 7 bankruptcy. They accepted some of the attorneys's advice and filed for Chapter 7 bankruptcy in October 2000, listing assets of \$192,663.45 and liabilities of \$242,281.74. Appellant and W received their discharge in January 2001.

Appellant and W determined to keep operating their business after petitioning for bankruptcy, and with the aid of W's full-time work at the coffee shop, they were able to break even for the balance of 2001. Applicant became ill with chest pains in January 2002, however, and was rushed to the hospital, where he underwent an emergency angioplasty procedure. Because of a pre-existing clause in his medical insurance, his carrier declined to pay any of his medical procedures, related fees and follow-up care (*ex. 2*). Unsuccessful in enlisting the insurance carrier to honor his medical claims, Applicant became personally responsible for close to \$35,000.00 in medical expenses associated with his angioplasty procedure.

Since his bankruptcy discharge in January 2001, Applicant and W have accumulated over \$43,000.00 in claims and judgments (three in all that exceed \$30,000.00), many health related as the result of his lack of medical insurance in 2001 and 2002 (R.T., at 44-45). Most of these debts remain outstanding. Of the three judgments entered against him, the largest covers a medical debt in the amount of \$24,721.42. The remaining two judgments appear to cover credit accounts: one for \$1,359.00 and the other for \$5,646.44. While he has been able to pay off some of his smaller debts, he has not been able to make any headway with his larger debts. He provides no documentation of payments of any of the listed debts in the SOR.

Pressed by their increasing debt load following their bankruptcy discharge, Appellant and W could not stay up with their home mortgage, and their home was foreclosed in November 2004, with \$233,000.00 owing at the time (R.T., at 69-70). To date, the foreclosing creditor has not informed them of any deficiency from the public sale of the property in June 2005 (R.T., at 63-66), and no deficiency is imputed to Applicant on the basis of the developed record.

Applicant currently makes about \$68,000.00 a year (R.T., at 53). W makes around \$24,000.00 a year. Applicant has a small 401K retirement account and savings of about \$1,500.00. After taxes and expenses, Applicant and W have a modest remainder each month of a little more than \$745.00, an amount only marginally more than what Applicant estimated in February 2004 (*see ex. 2*; R.T., at 67-68).

Applicant is highly regarded by friends and colleagues who have known him in the Marine Corps and worked with him professionally with defense contractors. Each of his references vouch for his diligence, integrity and ethical make-up (*see ex. A*).

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 for 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.

CONCLUSIONS

Applicant accumulated numerous business and medically-related debts after he and his wife opened their coffee shop business in May 1999. With the strains of starting up the new business and W losing her full time job shortly after they opened their coffee shop, Applicant and W slowly went into debt they could no longer control. By October 2000, their personal and business finances had deteriorated to the point where they could no longer cover their bills, and they petitioned for Chapter 7 bankruptcy protection. Electing to continue with their business after receiving their bankruptcy discharge in January 2001, they accumulated additional debts (some medically-related and others business related) which they could not pay off. Three of their creditors took Applicant and H to judgment; while their remaining creditors simply charged off their debts.

Security concerns are raised under Guideline F (financial considerations) of the Adjudicative Guidelines where the individual applicant is so financially overextended that he or she is at risk of having to engage in illegal acts to generate funds. Applicant's continued accumulation of delinquent debts following his 2001 bankruptcy and his failure to mount any sustained effort to resolve them warrant the application of two of the disqualifying conditions (DC) of the financial guideline: DC 1 (*A history of not meeting financial obligations*) and DC 3 (*Inability or unwillingness to satisfy debts*).

Most of Applicant's covered debts are business and medical-related, which he accumulated under some very extenuating circumstances while trying to keep his business going. 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*)) of the financial guideline applies to Applicant's situation. By itself, though, his extenuating circumstances do not absolve him of security concerns. Efforts to resolve his delinquent debts when he became able to do so must also be shown to absolve him of security concerns.

While Applicant has made some effort to resolve his post-bankruptcy debts, his efforts to date are not enough to mitigate the Government's security concerns. Without any documented payments of his debts to exhibit, it is impossible to determine with any degree of certitude whether he will be in a position to pay off his debts and judgments within the foreseeable future. So, at this stage of the proceedings, the most that Applicant can claim from his Chapter 7 discharge and ensuing work on his post-discharge debts is that his efforts to date represent positive steps towards resolving his debts.

Lacking any demonstrable repayment program for the repayment of the considerable debts he accrued after his 2001 bankruptcy discharge, Applicant does not demonstrate mitigation sufficient to justify application of any of the potentially pertinent mitigating conditions (MC) of the financial guideline. More specifically, neither E2.A6.1.3.1 (*The behavior was not recent*) nor E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) are applicable.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability that reflects good judgment, reliability and trustworthiness in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. Applicant's post-bankruptcy repayment efforts are not far enough along in their development to enable him to successfully mitigate security concerns connected with his financial difficulties. More time is needed to assess Applicant's progress in furthering his repayment efforts.

Taking into account all of the facts and circumstances surrounding Applicant's business and medical-related debt accumulations and steps he has taken to resolve them, unfavorable conclusions are warranted based on the presented record with respect to the allegations pertaining to Applicant's financial difficulties that are covered by Guideline F.2

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

Sub-para. 1.o: 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