

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has a history of delinquent debts, which he accumulated during his business and personal association with his wife (W), to whom he was married between 1999 and June 2001, when she passed away. While Applicant relied on W to take care of their business and household expenses before and after their marriage, the listed debts were presumptively opened and maintained in the joint interest of W and Applicant and remain Applicant's legal responsibility absent convincing evidence to the contrary. To date, Applicant has declined to address the debts, citing both previous uncertainty over legal responsibility and inability to pay them, and is unable to mitigate security concerns associated with his past history of delinquent debts. Appellant successfully refuted allegations that he falsified his security clearance applications. Clearance is denied.

CASENO: 06-24052.h1

DATE: 06/21/2007

DATE: June 21, 2007

In re:

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SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 06-20452  
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**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, which he accumulated during his business and personal association with his wife (W), to whom he was married between 1999 and June 2001, when she passed away. While Applicant relied on W to take care of their business and household expenses before and after their marriage, the listed debts were presumptively opened and maintained in the joint interest of W and Applicant and remain Applicant's legal responsibility absent convincing evidence to the contrary. To date, Applicant has declined to address the debts, citing both previous uncertainty over legal responsibility and inability to pay them, and is unable to mitigate security concerns associated with his past history of delinquent debts. Appellant successfully refuted allegations that he falsified his security clearance applications. Clearance is denied.

## **STATEMENT OF THE CASE**

On November 14, 2006, 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, and subject to the amended Adjudicative Guidelines (effective September 1, 2006), 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 December 4, 2006, and requested a hearing. The case was assigned to me on January 16, 2007, and was initially scheduled for hearing on March 28, 2007. The hearing was rescheduled for April 4, 2007. A hearing was April 4, 2007, 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 three exhibits; Applicant relied on three witnesses (including himself) and two exhibits. The transcript (R.T.) was received on April 12, 2007.

## **PROCEDURAL ISSUES**

Following a hearing objection by Department Counsel to a background approval letter (ex. B) from the Transportation Safety Administration (TSA). During the hearing, I granted leave to Department Counsel to research the nature and scope of Applicant's Hazardous Materials Endorsement (HME) from TSA (entitled "TSA Determination of No Security Threat"). For good cause shown, Department Counsel was granted 14 days to supplement the record. Within the time permitted Department Counsel furnished a memorandum brief detailing the nature and scope of the TSA Determination of No Security Threat letter, along with copies of the controlling regulation, background materials on TSA's threat assessment program, and statement of a TSA official to a Congressional Homeland Security oversight committee. Applicant, in turn, was allowed seven days to respond. Applicant did not supplement the record. Official notice is taken of the threat assessment program and Homeland Security statement of TSA deputy administrator pursuant to Rule 201 of F.R.Evi.

The TSA security threat assessment was admitted as Applicant's ex. B. It approves Applicant's application to obtain or review hazardous materials and credits him with meeting the requirements for a TSA Determination of No Security Threat. The TSA threat assessment is governed by the requirements of 49 CFR § 1572 and is limited to checking an applicant's fingerprints on file with the FBI, his criminal history, and any intelligence-related data on the applicant. It requires only two days to complete (*see* statement of TSA deputy administrator) and is much narrower in scope and comprehensive in nature than a security clearance application. So, while there is some overlap between a TSA threat assessment and a security clearance application, the threat assessment is much narrower in scope and thoroughness than its security clearance counterpart. Its assessment value is, accordingly, more limited than the security clearance application required of those who seek access to classified information (as here). As a result, Applicant's security threat assessment is entitled to some weight as an indicator of Applicant's reliability and trustworthiness, but it is not entitled to any collateral estoppel affect on his security clearance application.

### **SUMMARY OF PLEADINGS**

Under Guideline F, Applicant is alleged to have accumulated six delinquent debts in excess of \$38,000.00 that were either charged off or placed in collection. Under Guideline E, Applicant is alleged to have falsified his security clearance application (SF-86) of March 2006, by failing to list his debts over 180 and 90 days delinquent, respectively.

For his response to the SOR, Applicant denied each of the allegations in the SOR. He explained that each of the listed debts was created by his since deceased wife to defray expenses associated with the trucking corporation she formed and controlled. Applicant explained that he was neither an officer nor incorporator and assumed she was paying the bills of the corporation and taking care of the business at the house after she became ill in January 1999 and stopped driving their truck. Applicant explained he did not have a credit card and was paid for his fuel and other expenses out of a company account that deposits were made to for fuel and expenses. Further, Applicant explained that he did not intentionally omit any debts, and never knew of any delinquent debts (personal or corporate) when he completed his SF-86 in March 2006.

### **STATEMENT OF FACTS**

\_\_\_\_\_Applicant is a 65 year-old truck operator 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.

#### **Applicant's finances**

After living and driving together for over eight years, Applicant and W bought their truck jointly in 1996 for \$98,000 (R.T., at 74-75). They continued driving together and living together after purchasing the truck and shared business and personal expenses. Applicant and W married in September 1999 and continued driving together on their truck assignments. Continuing their

expense-sharing arrangement they practiced before their marriage, Applicant relied on W to pay their truck-related and personal bills (R.T., at 53).

W was a heavy smoker and in November 1999 (two months after their marriage) she developed serious breathing problems that required hospitalization (R.T., at 52-53). During her inpatient stay, W's treating physician advised her to quit smoking. She declined his professional advice, however, and continued smoking. Her condition worsened over the ensuing 12 months to the point she had to give up driving the truck. Applicant continued driving their jointly owned truck, assuming W was paying their business and personal expenses.

After W stopped driving the truck (in December 2000), she formed a corporation that she alone controlled under the corporate name of S corporation. Applicant was neither an incorporator nor officer of the business and had little to nothing to do with the company's truck receipts and payments of expenses. Applicant continued to drive the truck and rely on W to take care of the books (receipts and expense disbursements). He exercised no oversight over W's management of the trucking and personal accounts of the trucking business and doesn't know whether she ever transferred the truck to S Corporation (R.T., at 110-11). Applicant was paid approximately \$500.00 a week in cash advances for driving the truck. Expenses (fuel and maintenance) were paid out of a company account which received deposits from the Government for fuel and other expenses.

W passed away in June 2001 (R.T., at 62-63). Before she died, she had filed for divorce from Applicant. Applicant was on the road at the time of her death on a trucking assignment and was not notified of her death by any of W's family members. A friend called him two weeks later to convey the news of W's death (R.T., at 63-64). When Applicant returned home, he discovered that W's children had completely cleaned out everything belonging to W and himself and taken all of W's business and personal records. Without any personal records, Applicant had no immediate way of ascertaining the state of their individual and joint finances (R.T., at 64, 102-03).

Unaware of any prior debt problems (business or personal), Applicant was informed by the truck's lender in September 2001 that the truck was going to be repossessed for payment default (R.T., at 54-55). Applicant was never informed by the lender of the sale proceeds produced by the sale of the vehicle at public auction. While he can not account for why he never received any notice of sale, he acknowledges he never provided the lender with any information about the truck's ownership, or initiated efforts to obtain a credit report, communicate with the lender, or educate himself about the status of the truck debt (R.T., at 87-88). He attributes his follow-up failures to his lack of records after W's family removed all of the contents of their home (including whatever books and paperwork pertaining to the truck and business) following her death.

Shortly after the truck repossession, Applicant sold the trailer he and W purchased for around \$8,600.00. Title to the trailer remained in his name, and he sold the trailer in September 2001 for \$2,500.00 (R.T., at 113-14). Applicant sold the trailer in his name and doesn't know whether W assigned the truck over to her corporation before she expired (R.T., at 114-15).

Applicant claims no personal knowledge of any of the debts listed in the SOR, except for the listed debt owed to creditor 1.f and apparently expressed little interest in his business or household debts before or after his marriage to W. Applicant's accumulated debts which are attributable to him on his credit report (*see ex. 2*) exceed \$38,000.00. In retrospect, he insists he should not have trusted

W to pay their joint bills. While two of the debts appear to be W's personal debts (creditors 1.c and 1.e), he remains generally uncertain whether the listed debts covered in the SOR are W's personal debts or their joint business-related debts (R.T., at 81- 99, 108). Before she died, W only assured Applicant all of the bills were paid; she never identified individual debts for Applicant (R.T., at 103-04). As a result, Applicant did not at the time of W's death know which, if any, of the listed debts were delinquent (R.T., at 102-04).

When interviewed by an OPM investigator in June 2006, the investigator informed Applicant of the delinquent debts on his credit report (R.T., at 62-63, 105-06). Each of these debts (creditors 1.a through 1.f) were listed in Applicant's credit reports and opened between June 1995 (creditor 1.b) and June 1999. Two were opened as joint accounts (creditors 1.d and 1.f), three as individual accounts (creditors 1.a, 1.1.b and 1.e), and one as an undesignated revolving account (creditor 1.c). It cannot be ascertained from Applicant's testimony or his credit reports whether any of these listed debts belonged to Applicant in his own right (*compare* exs. 2 and 3). Nor can it be determined from the evidence of record whether these accounts were used by Applicant and W jointly, or individually by either person. They comprise virtually all of Applicant's listed debts in both of his credit reports. And presumably, these accounts were jointly opened and charged for the beneficial business and household interests of both W and Applicant. Despite opportunities to do so, Applicant has been unable to provide any correspondence exchanges between Applicant and the credit reporting agencies, or the creditors themselves, that could rebut or cast doubt on this presumption. After initially claiming in his response that the debts belonged either to S Corporation or W, he ultimately acknowledged at hearing that the debts were joint debts that he is responsible for (R.T., at 91).

Asked by the investigator whether he would be contacting the creditors attributed to him in the referenced credit report to arrange for payments, Applicant indicated he would not for lack of money at the time to pay these creditor (R.T., at 86-87). To date, he has been in touch with only two of the listed creditors referred to in his credit reports and SOR, one of whom (creditor 1.b) offered to accept \$6,200.00 from Applicant in full settlement of its debt. Applicant did not have the funds to accept this settlement offer and has initiated no payment arrangements with any of the listed creditors (R.T., at 96-97). Based on the credit reports, Applicant remains jointly and severally liable to these creditors. At this time, he remains unable and unwilling to satisfy these creditors, regardless of his acknowledged legal responsibility for the debts.

Since W's death, Applicant has driven for C, a long time friend and contractor for L Corp. He characterizes his relationship with C as a subcontractor and has grossed around \$24,000.00 a year for the past two years (R.T., at 69-70). He has no current 401(k) retirement plan and by all accounts lives within his means.

### **Applicant's SF-86 omissions**

Applicant completed an SF-86 in March 2006. In responding to questions inquiring about debts over 180 and 90 days past due, respectively, he answered "no." He attributes his denials to his lack of any knowledge of delinquent debts belonging to him before meeting with the OPM agent in June 2006 (R.T., at 97-101). While he had some information that the truck was not being debt serviced, he couldn't be sure. And after the truck was repossessed, he continued to believe it generated sufficient proceeds at the auction sale to cover any amounts still owing on the truck.

Applicant's explanations for his debt omissions are sufficiently plausible under all of the circumstances extant in the record to warrant acceptance, and are accepted.

### **Applicant's character references**

Applicant is highly regarded by friends and colleagues who know him well. The three colleagues who wrote endorsements in his behalf describe him as honest and patriotic and one who understands seriousness of security and who would put his country's safety before his own concerns (*see ex. B*). A hearing witness in Applicant's behalf (D) has known Applicant since 1995 through their trucking exchanges and more recently as a dispatcher for the company Applicant drives for (R.T., at 124). D described Applicant as someone he would recommend for a position of trust.

A second hearing witness (C) owns the truck that Applicant drives, and they work as a team (R.T., at 134). She has known both Applicant and W for many years (since 1996) and characterized Applicant as a very reliable and professional driver and one who would have rushed back to pay the listed delinquent debts had he known of them earlier (R.T., at 134-35). C expressed considerable familiarity with the Government's payment system when Applicant and W were hauling for the Government (R.T., at 146-48 ), and later advised Applicant of W's death. Unlike her present advance system in place, Applicant never had access to payment advances while W controlled their trucking assignments. C assures that all of the settlement proceeds were remitted to W, who placed them in her S corporate account (R.T., at 148-49).

C was not aware of any financial problems between Applicant and is under the impression Applicant did not become of the listed delinquent debts until he was interviewed during his clearance up-date investigation (R.T., at 149-51). C appears to be sincere in her accounts of Applicant and W. Still, she acknowledged she had no first hand knowledge of Applicant's financial issues until Applicant familiarized her with his finances during the clearance re-certification process (R.T., at 150-52). C's familiarity with Applicant's finances is too limited to warrant adopting her impressions of Applicant's state of mind .

### **POLICIES**

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 1, 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These amended 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:* Failure or inability to live within one's means, satisfy debts and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

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## **Personal Conduct**

*The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

## **Burden of Proof**

By virtue of the precepts framed by the revised Adjudicative Guidelines, 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.

## **CONCLUSIONS**

Applicant is a meritorious truck driver who accumulated a number of delinquent debts during his personal and business relationships with his wife, who passed away in 2001. These delinquent debts exceed \$38,000.00, which Applicant has been unwilling to address to date. Still uncertain whether the debts were originated by his deceased wife for her personal interests or their joint business and household interests, Applicant is neither able nor willing to pay these accrued debts.

### **Financial issues**

Security concerns are raised under the financial considerations guideline of the revised Adjudicative Guidelines where the individual appellant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which can raise questions about an the individual's reliability, trustworthiness and ability to protect classified information, and place the person at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of delinquent debts and his failure to document payments on any of his listed debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines for financial considerations: DC 19(a) (*inability or unwillingness to satisfy debts*) and DC 19(c) (*a history of not meeting financial obligations*).

Applicant's debts are attributable in part to his deceased wife's creation without his knowledge or approvals. He has both disputed and accepted joint responsibility for the debts and has made no tangible attempts to ascertain the origin and status of the debts since his wife passed away in June 2001. Since he began driving for C (following W's death), he has made no tangible headway in addressing the delinquent debts attributable to him in his credit report. His debt accumulations are cumulative, mostly factually undisputed as to amounts owing, and are still unresolved. While there is some question about who opened the accounts and personally benefitted from them, they are listed as belonging to Applicant in his credit reports. Without any documented evidence from Applicant to undue the presumption they belong to him, reasonable doubts about whether they are his debts or not must be resolved against him.

Since being shown his credit report by the OPM investigator in June 2006, Applicant has neither acknowledged the debts attributed to him nor taken steps to actively dispute them with the credit reporting agencies and the creditors themselves. Nor has explored debt repayment with any of the listed creditors or pursued financial counseling and/or debt consolidation to assist him in resolving his debts. Without any more documentation to show the debts are not legitimate ones, he is not in a position to rightfully attribute all of the listed debts to W. So, while his debts are partially extenuated by his employment circumstances with W and his reliance on her to take care of their business and household expenses, his reliance on MC 20 (b) (*the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly under the circumstances)*) entitles him to only limited benefit.

Mitigation credit is not available to Applicant based on his presented proofs. Even though all of the debts are old and are likely collection-barred by pertinent statutes of limitations in his state they reflect areas of continuing judgment concern absent demonstrated Applicant efforts to question their legitimacy and/or commit to resolving them in some tangible way. Age of the debts at issue is covered by one of the mitigating conditions for financial considerations: MC 20(a) (*the behavior*



*happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*) has some applicability, but is not dispositive. MC 20(e) (*the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue*) has some applicability, too, but lacks any documented follow-up to contest or resolve any of the listed debts in his credit reports and SOR

Potentially applicable statutes of limitation have not been recognized by our Appeal Board to absorb security risks associated with unresolved delinquent debts. While statutes of limitation in general are considered important policy tools for discouraging plaintiffs from pursuing stale claims and promoting finality in litigation, they have never been equated with good-faith efforts to repay overdue creditors. *See, e.g.,* ISCR Case No. 02-30304, at 3 (App. Bd. April 2004)(quoting ISCR Case No. 99-9020, at 5-6 (App. Bd. June 2001).

To be sure, Applicant did not assert relevant statutes of limitation in his defense, but questioned whether these debts ever belonged to him before ultimately acknowledging his joint responsibility for them. His subsequent failures to earnestly address these debts and seek counseling and/or debt consolidation after being made aware of the debts by an OPM investigator in 2006 preclude him from taking advantage of any of the other mitigating conditions of the financial considerations guideline. While the term “legitimacy” used in MC 20(e) could conceivably be stretched to embrace enforcement as well as ownership issues, the issue has not been developed by the Appeal Board to date, and has not been raised or addressed by either of the parties to this proceeding. At first impression, the term “legitimacy” would seem to have been intended to embrace debt ownership questions, and not enforcement ones. Whatever the ultimate reach of the term, it need not be resolved here.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in financial cases (as here) and bring into play security concerns covered by both the financial consideration and personal conduct guidelines.

Taking into account all of the facts and circumstances surrounding Applicant's debt accumulations and absence of any documented steps taken to resolve them, Applicant fails to mitigate security concerns related to his longstanding debt delinquencies and judgment lapses associated therein. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 2.a through 2.f of the SOR.

### **Personal Conduct issues associated with Applicant's clearance application**

Security concerns over Applicant's judgment, reliability and trustworthiness are raised under the personal conduct guideline, too, as the result of his omissions of his debts in the SF-86 application he completed in March 2006. By omitting debts attributable to him over 180 and 90 days delinquent, respectively, Applicant failed to furnish materially important background information

about his debts that was needed for the Government to properly process and evaluate his security clearance application.

Applicant's SF-86 omissions are attributable to his mistaken belief he had no debts over 180 and 90 days delinquent. Applicant's impressions at the time, while potentially mistaken (based on the absence of furnished documentation in the record), were made in good faith, without any indicated intent to mislead. Applicant's explanations, considering both the circumstances surrounding the furnished information at the time and Applicant's overall reputation for honesty and trustworthiness among his friends and colleagues who know him well, enable him to convincingly refute the falsification allegations. Considering all of the evidence produced in this record, favorable conclusions warrant with respect to the personal conduct guideline allegations that Applicant knowingly and wilfully omitted debts more than 180 and 90 days delinquent, respectively, when completing his security clearance application.

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 CONSIDERATIONS):      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

GUIDELINE E: (PERSONAL CONDUCT):      FOR APPLICANT

Sub-para. 2.a:	FOR APPLICANT
Sub-para. 2.b:	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

