



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-15527
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: *Pro Se*

September 16, 2008

**Decision**

WESLEY, Roger C., Administrative Judge:

**Statement of Case**

On April 22, 2008, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, and Department of Defense (DoD) Regulation 5200.2-R, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on May 23, 2008 and requested a hearing. The case was assigned to me on June 4, 2008, and was scheduled for hearing on July 15, 2008. A hearing was held on July 15, 2008, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, or deny, Applicant's application for a security clearance. At hearing, the Government's case consisted of four exhibits; Applicant relied on two witnesses (including himself) and three exhibits. The transcript (R.T.) was received on July 23, 2008. Based upon a

review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Procedural Rulings and Evidentiary Issues**

Before the close of the hearing, Applicant requested leave to supplement the record with documentation of his payments to creditors 1.,e, 1.f and 1.g, an entered judgment by the same creditor identified in sub-paragraphs 1.b and 1.c., a written budget, and medical payments. For good cause shown, Applicant was granted seven days, to July 22, 2008 to supplement the record. The Government was afforded two days to respond. Within the time permitted, Applicant supplemented the record with documented copies of payments to creditor 1.d and 1.f, a legal services agreement for filing a Chapter 13 bankruptcy petition, court records involving creditor 1.c, a statement concerning his recent purchase of a 2008 Ford pick-up truck, and a prepared written budget. Department counsel did not object to these post-hearing submissions. Applicant's post-hearing exhibits were admitted and considered.

### **Summary of Pleadings**

Under Guideline F, Applicant is alleged to have accumulated seven debts exceeding \$101,000.00. Under Guideline E, he is alleged to have omitted delinquent debts over 180 and 90 days delinquent, respectively, when completing his January 2007 electronic questionnaire for investigation processing (e-QIP).

For her answer to the SOR, Applicant admitted five of the allegations. He denied the allegations covered by sub-paragraphs 1.b and 1.c, claiming these entries are duplicates of a debt covered by an entered default judgment, which he continues to oppose. Applicant claimed, too, that the creditor 1.e debt is a duplicate of the admitted debt covered by creditor 1.g. Applicant attributed his delinquent debt problems to his acquiescing in his wife handling the bills, and her back injuries in 2002 that left her unemployable and unable to assist in paying their bills.

### **Findings of Fact**

Applicant is a 56-year-old-computer integration specialist for a defense contractor who seeks to retain his security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein and adopted as relevant and material findings. Additional findings follow.

Applicant is married (for 32 years) and has one grown daughter. He has held a security while in the Air force and Air National Guard, and has held a clearance for most of his tenure with his current defense contractor, which commenced in 1978 (R.T., at 83-84, 89-90).

Beginning in the early 1990s, Applicant began passing the responsibility for handling family finances to his wife (W). Tired of the discord that accompanied finance

disputes between himself and W, he transferred full bill paying responsibility to W in 1997. The arrangement worked satisfactorily for a number of years.

Applicant's arrangement with W to handle all of the family's finances unraveled following W's accident in 2002 and resulting back injury. Because of her injury, she was forced to take disability and cease working (R.T., at 52-54). When she could no longer contribute to the family's financial obligations, she stopped making payments on many of their joint credit card accounts (R.T., at 30). When ever Applicant would ask about the status of their accounts, W would always assure him that she was taking care of them. W claims she was concerned about Applicant's health and did not want to worry him with their debt delinquencies. Like W, Applicant has been in poor health for a number of years. Both W and Applicant suffer from diabetes and back problems (R.T., at 32-33, 51-54, 68). Each underwent bypass surgery (R.T., at 29-30, 51-55). Their co-pays for their medications exceed \$1,000.00 a month according to W (R.T., at 35, 56-57). While this does seem high, it is not challenged and is accepted.

Between 2002 and 2007, Applicant accumulated considerable debt, much of it consumer-related. Altogether, Applicant and W accrued seven delinquent debts exceeding \$101,000.00 with accumulated interest and fees. Applicant claims two of these listed creditors represent duplicate debts. Whether they are or not cannot be determined without more documentation. Applicant provides no evidence of mounted disputes with the credit reporting agencies over the debts he claims are duplicates and no correspondence exchanges with the creditors themselves. While they may be duplicates, the duplications cannot be determined from the credit reports. Without any documented disputes of these listed debts, too many doubts remain to draw any favorable inferences about their duplicate status.

One of the listed accounts (creditor 1.c) is a collection debt that lists an amount owed of \$33,369.00. Court records report that this creditor purchased the debt from Applicant's credit card obligee and petitioned the court for recovery of \$14,118.02, along with pre-judgment and post-judgment interest, attorneys fees and costs (see ex. G). Both W and records confirm that Applicant and W were served with a summons associated with the petition in May 2006 (*compare* ex. G with R.T., at 122-28). Court documents report that Applicant and W were also mailed a copy of the default judgment entered in August 2006 (see ex. G). Applicant and W do not challenge receipt of the documents, and made no appearances in the matter (see ex. G; R.T., at 79,124). Neither Applicant nor W ever initiated any appeal of the default judgment, and never sought to have the judgment vacated for cause. The judgment itself awards relief to creditor 1.c as follows: \$14,118.02 in principal, \$14,415.61 in accrued pre-judgment interest, \$2,117.70 in attorneys fees, plus costs. Post-judgment interest by law accrues on the total balance awarded according to the legal rate of interest. Without any payments towards satisfaction of this judgment, the total judgment balance must currently exceed \$35,000.00. With post-judgment interest continuing to accrue at the legal rate, this judgment debt can be expected to add significant annual increases to the outstanding judgment balance.

While Applicant admits to his creditor 1.a debt, he never used the card himself and does not know when the account was last addressed. The creditor 1.a account reports an outstanding balance of \$12,196.00 on his credit report. After reviewing his credit report, Applicant asked W to look into it (R.T., at 92). To date, neither he nor W have received any information from the creditor about the listed debt. Applicant is looking to his bankruptcy lawyer at this time to help him figure out this debt, and devise a plan for resolving this debt and others he has no been able to address (R.T., at 92-93). Currently, Applicant's creditor 1.a debt remains unsatisfied as alleged in the SOR.

Addressing his creditor 1.d debt, Applicant assures he has paid this debt down considerably (to just over \$12,000.00) from the amount listed in the SOR (\$16,707.00). His written and oral proofs corroborate his claims and are accepted (see ex. B; R.T., at 48-49, 59-60). While W's documented payments on this account collectively reflect modest payments, they appear to represent part of an ongoing debt reduction effort (*compare* exs. B and E). Applicant documents a similar repayment arrangement with creditor 1.f, which is similar enough to the debt covered by her repayment arrangement to warrant inferences it is the same identified creditor 1.f debt (see exs. 3, 4, and D; R.T., at 48, 59, 99-100).

Applicant assures he had little knowledge of the extent of his debt delinquencies before his receipt of the SOR. He acknowledges creditor 1.c's initiating a debt petition against him in April 2006, but nothing more about his other delinquent accounts. In July 2008 (following the hearing in this case), he and W entered into a legal services agreement for the expressed purpose of filing a petition for Chapter 13 relief (see exs C and F). The agreement itself recites schedules and notices to creditors and suggests some knowledge of outstanding debts by both Applicant and W. The agreement itself recites professional consideration of \$3,274.00, which breaks down to a down payment of \$1,700.00 and monthly payments of \$374.00 a month through the plan (see ex. F). It is not clear from their furnished documentation whether or not they have tendered the agreed fees and proceeded with the filing of a Chapter 13 petition.

Applicant and W claim no financial counseling before the hearing and provide no evidence of any counseling associated with their Chapter 13 legal agreement (see exs. C and F). Based on the letter they received from their bankruptcy counsel (ex. C), Applicant and W are in the process of compiling information necessary for counsel to prepare the necessary schedules, and are in the process of preparing to attend a required counseling session (see ex. C; R.T., at 77-78). It remains unclear, though, when Applicant and W will be petitioning for Chapter 13 relief and whether they will be able to meet the payment requirements of any approved plan. Applicant and W provide no additional documentation of their Chapter 13 progress, or if and how they are addressing their remaining outstanding debts listed in the SOR. At this time, they provide no documentation of any dispute or repayment efforts relating to creditors 1.b, 1.e and 1.g, and no favorable inferences can be drawn at this time regarding any of these creditors (R.T., at 47-48, 93-98).

With their available income, Applicant and W are currently purchasing their home. Their furnished budget reflects monthly income of around \$4,000.00 a month on average for the calendar year of 2008 and estimated payments on current expenses of around \$4,000.00 a month (see ex. I). Their budget allocates monthly payments for their 1.d and 1.f creditors, but nothing more for any of the remaining listed creditors (see ex. I).

Applicant and W value their home at \$40,000.00 and owe approximately \$15,000.00 on the mortgage securing their home loan (R.T., at 107). Applicant estimates his mortgage payments are about \$630.00 a month. He has a stock savings plan that he contributes to (R.T., at 108). He also owns a pick-up truck that he purchased in March 2008 in exchange for his 2003 trade-in Explorer that he had recently totaled out, and monthly payments of \$445.98 (an increase of \$11.38 a month over the payments he was making on the Explorer) on a \$21,729.00 payoff for the new 2008 vehicle (*compare* ex. H with R.T., at 110-17).

Asked to complete a security clearance application (e-QIP) in January 2007, Applicant omitted his debts over 180 and 90 days delinquent, respectively, when responding to questions 28a and 28b. He attributed his omissions to his lack of knowledge of any delinquent debts besides the judgment debt which he listed (see ex. 1; R.T., at 104). He assures he did not purposely omit his delinquent debts.

To be sure, most of Applicant's omitted debts date to 2002 and (according to W) were admittedly delinquent for long periods of time. Without a credit report or spouse to keep him abreast of his debts, it is conceivable that he might not have known he had debts at the time that had been or were 180 days delinquent, or were then over 90 days delinquent. His detailing of the 2002 adverse judgment taken against him by creditor 1.c is provides plausible proof of his good-faith intentions about being up-front with his known delinquent debts. Considering all of the circumstances of Applicant's omissions, his claims of inadvertent omission are accepted as both plausible and credible. Inferences warrant that Applicant's omissions were not deliberate, and not made with any intent to intentionally mislead the Government.

## **Policies**

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) 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:* 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. Adjudication Guidelines (AG) ¶ 18.

### **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. AG ¶ 18.

### **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.

### **Analysis**

Following his wife's accident and ensuing disability in 2002, Applicant and his wife fell behind with their debts. Out of concern of worrying Applicant, W did not share information with Applicant for many years regarding the delinquent status of their accounts. Only the petition for relief filed by creditor 1.c in May 2006 was made known to Applicant, and only because he was personally served with the petition, and later notified of the default judgment. Applicant's listed debts either remain unresolved or have only recently been addressed with modest repayment arrangements. Absent documented discharge or payment initiatives with her remaining listed creditors, these debts raise security significant concerns. Of initial security concern, too, are Applicant's omissions of his delinquent debts in his completed e-QIP.

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

In Applicant's case, his still outstanding delinquent 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." These disqualifying conditions cover the core concern of AG ¶ 18: poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which, both individually and collectively, can raise questions about an individual's reliability, trustworthiness and ability to safely occupy a position of trust.

Applicant's accumulated debts are attributable in part to his wife's 2002 accident and ensuing disability, and her failure to keep him apprised of the status of his debts. Together, his described difficulties in knowing and apprehending the status of his accounts, through no obvious fault of his own provide enough extenuating circumstances to warrant some application of mitigating conditions covered by AG ¶ 18. 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," has some application.

At this time, none of Applicant's covered debts are documented to have been paid, disputed, or settled. They exceed \$101,000.00 in the aggregate and represent a considerable debt load on his current income sources. His documented payment arrangements with creditors 1.d and 1.f represent some progress in addressing these particular debts, but not enough to manifest any established plan for addressing his other listed debts. While somewhat encouraging, these two payment arrangements are still very recent and modest and reflect too little seasoning to warrant any significant overall mitigation weight.

Without more documented information to demonstrate Applicant is addressing the bulk of his listed debts and making use of financial counseling, he cannot safely mitigate all of the Government's financial concerns. Holding a security clearance involves the exercise of important fiducial responsibilities, which include the expectancy of consistent trust and candor. Financial stability in a person cleared for access to 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.

Use of a whole person assessment that takes into account all of the facts and circumstances surrounding Applicant's debt repayment efforts, while encouraging, are still insufficient to enable him to surmount security concerns independent of the express disqualifying conditions covered by AG ¶ 18. Without more exhibited payment seasoning and work-out efforts to demonstrate progress in resolving his remaining debts, it is difficult to draw convincing conclusions about his overall trustworthiness based on factors not covered in the mitigation conditions of the guideline for financial considerations. Based on their current reported income, it does not appear likely that Applicant and W will be in a position to make any material reductions in his remaining debts in the foreseeable future. While his proposed Chapter 13 petition holds some promise, its preparation and filing are still too uncertain to facilitate any firm predictions about the likelihood of the petition's success.

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a "meaningful track record" in the management of an applicant's finances, which certainly includes evidence of actual debt reduction through repayments. See ISCR Case No. 05-01920, at 5 (App. Bd. Mar. 1, 2007). True, an applicant's good-faith debt repayment does not require that he demonstrate repayment of each and every listed debt. All that is required is that the applicant demonstrate that he developed a plan to resolve his debts and taken significant actions to implement the plan. See ISCR Case No. 07-16013, at 2 (App. Bd. May 21, 2008); ISCR Case No. 04-09684, at 2 (App. Bd. July 6, 2006).

Applicant fails to meet Appeal Board requirements for repayment progress with his modest repayments to a couple of his listed creditors. Most of Applicant's listed debts lack any kind of dispute or repayment documentation. Particularly troublesome is the outstanding judgment taken against him in August 2006. With accruing post-judgment interest continuing to accrue, the judgment is likely approaching \$40,000.00 in aggregate debt and places Applicant in serious risk of a levy on his personal and real property interests. Absent some tangible form of repayment plan on this debt and his other covered debts, safe predictive judgments about his finances cannot be made at this time.

Taking into account all of the facts and circumstances surrounding Applicant's unsatisfied debts and overall presentation of payment histories, Applicant does not mitigate security concerns related to her still outstanding debts. Unfavorable conclusions



warrant with respect to the allegations covered by sub-paragraphs 1.a through 1.c, 1.e and 1.g. Favorable conclusions warrant with respect to sub-paragraphs 1.d, and 1.f.

### **Applicant's debt omissions**

Posing potential security concerns, too, are Applicant's omitted delinquent debts in the e-QIP he completed in January 2007. He attributed his omissions to his lack of any knowledge of debts over 180 and 90 days delinquent. He cites the adverse judgment covering creditor 1.c that he did list as proof of his good-faith intentions to disclose known creditors. His claims have merit.

From a whole person perspective, Applicant presents as an essentially honest and hardworking applicant who deferred to his wife to manage their finances and pay the bills. By W's credible accounts, she deliberately withheld the status of his debt delinquencies out of concern for his health. Applicant's e-QIP omissions were not motivated by any deliberate intent to mislead the Government, and his omissions are not indicative of any overall trust problem.

Based on Applicant's accepted explanations, he may take full advantage of: MC 17(f), "the information was unsubstantiated or from a source of questionable reliability." Overall, Applicant is credited with his successful refutation of the allegations of falsification in sub-paragraphs 2.a and 2.b of the SOR.

In reaching my decision, I have considered the evidence as a whole, including each of the E2.2 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, I make 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:	FOR APPLICANT
Sub-para. 1.e:	AGAINST APPLICANT
Sub-para. 1.f:	FOR APPLICANT
Sub-para. 1.g:	AGAINST APPLICANT

#### **GUIDELINE E: (PERSONAL CONDUCT): FOR APPLICANT**

Sub-para. 2.a:	FOR APPLICANT
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## **Conclusions**

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.

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Roger C. Wesley  
Administrative Judge

