



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



In the matter of:	)	
	)	
	)	
-----	)	ISCR No. 08-02692
SSN:-----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro Se*

April 30, 2009

**Decision**

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WESLEY, Roger C., Administrative Judge:

**Statement of Case**

On October 24, 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 November 28, 2008, and requested a hearing. The case was assigned to me on February 18, 2009, and was scheduled for hearing on March 24, 2009. A hearing was held as scheduled, 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 three exhibits; Applicant relied on one witness (himself)

and 11 exhibits (AEs A-J). The transcript (R.T.) was received March 31, 2009. 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 documented payments of two of his medical debts. For good cause shown, Applicant was granted seven days to March 31, 2009 to supplement the record. Within the time permitted, Applicant provided copies of a transmission to a credit reporting agency and a bank account statement. Department counsel did not object to the admission of the submissions. The submissions were admitted as exhibits K and L.

### **Summary of Pleadings**

Under Guideline F, Applicant is alleged to have accumulated 14 delinquent debts exceeding \$30,000.00 (including a student loan debt of \$3,592.00). For his answer to the SOR, Applicant admitted some of the allegations. He admitted the debts covered by subparagraphs 1.b, 1.f through 1.i, and 1.l through 1.n. He denied the remaining six allegations, claiming he paid off some of the listed debts (creditors 1.c and 1.d); he is unfamiliar with one creditor (creditor 1.e), and he disputed others (creditors 1.j and 1.k). Applicant claimed he is addressing his admitted debts.

### **Findings of Fact**

Applicant is a 30-year-old assembler (previously a security guard) for a defense contractor who seeks a 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 married his first spouse (W1) in November 2003 (see ex. 1). They have no children from their marriage and divorced in October 2006 (ex. 1). Applicant remarried in early 2007 (R.T., at 71), and has one son from this marriage (R.T., at 89). Applicant served three years in the U.S. Army between July 2001 and April 2004, and was deployed in 2003-2004 (R.T., at 72). He documents his honorable discharge from the Army (see ex. D). Albeit, he remains in the active Army Reserves (R.T., at 68, 72).

Applicant accumulated a number of debts during his teenage and college years when he did not have steady work (see exs. 2 and 3; R.T., at 41). Some of them were small, and he was able to pay them off when he gained steady employment (see ex. A); R.T., at 42-43). He accumulated additional debts as well (some large and some small) that W1 failed to take care of during his military deployments (R.T., at 48-49, 74). These debts have not been resolved to date.

Applicant's three largest debts encompass back rent owed to a landlord while Applicant was deployed, a student loan debt, and a deficiency owed on a repossessed

vehicle. The landlord (creditor 1.a) seeks \$3,392.00 in back rent, which Applicant has been unable to pay or resolve to date. While Applicant was deployed, W1 took care of their monthly bills. When he returned from deployment, he learned that W1 had not paid the scheduled monthly rent and had received an eviction notice from the landlord (R.T., at 48-49). He has since talked to the landlord about paying part of this debt through a payment plan, but his offer was declined (R.T., at 49).

Applicant's student loan debt (creditor 1.g which has a listed balance of \$3,592.00) originated in 1998 and went into default status. He made several \$100.00 payments in 2007 and early 2008 before stopping his payments altogether (R.T., at 78-79). In December 2008, the creditor (creditor 1.g) initiated wage garnishment (see exs. 2, G, I and J; R.T., at 52-54, 79 ). His wages are being garnished at the rate of \$77.00 a week (R.T., at 79-80), and he has no time estimates for when this debt will be fully satisfied.

Applicant's other large debt (his debt to creditor 1.k) represents a deficiency balance on a repossessed vehicle in the amount of \$14,200.00. In 2004, Applicant fell behind in his car payments and voluntarily returned the vehicle to the seller (R.T., at 65-66). He has made no progress, to date, in paying off this deficiency balance.

While Applicant has been able to pay off two small medical accounts (creditors 1.c and 1.d), he has made negligible progress in the payment of his other listed creditors (R.T., at 89). He hopes to be able to address his largest debts after he pays off his more numerous smaller accounts (R.T., at 57-59).

Applicant has not sought any financial counseling to date and has made no documented voluntary payments on most of his listed debts (R.T., at 93-94). Except for the two small debts (creditors 1.c and 1.d) and the continuing garnishment of his pay by his student loan creditor, Applicant has not made any documented headway in addressing his listed debts. He continues to await return calls from some of the small creditors he recently contacted to explore payment arrangements (R.T., at 69). But to date, most of the creditors he contacted are not willing to set up payment plans with him (R.T., at 69-70, 81-82).

Applicant estimates he takes home approximately \$700.00 a month from his civil employment and another \$280.00 a month from his monthly drill meetings (R.T., at 83-84). After paying his rent and necessities, he estimates he has a net monthly remainder of no more than \$100.00 a month (R.T., at 87).

Afforded an opportunity to address his outstanding debts, Applicant failed to provide any tangible evidence of his resolving his listed debts. He did provide a March 2009 letter to a credit reporting agency containing disputes of four of his creditors. It is not clear, though, whether any of these covered creditors match any of his listed creditors. Still unresolved are the delinquent debts covered by creditors 1.a and 1.b and creditors 1.e through 1.n. That some of these named creditors no longer appear on Applicant's latest credit report is insufficient in and of itself to credit Applicant with

resolution of the debts. Each of these debts are reported in Appellant's 2006 and 2008 credit reports (see exs. 3 and 4).

Applicant earned a number of awards and commendations during his military service enlistment (ex. E). His promotion and worksheet shows a number of points awarded (ex. F). By all accounts, he is a responsible husband of W2 and parent of his young son.

### **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, ¶ 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 facts 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**

Applicant is a responsible employee of a defense contractor who accumulated a number of delinquent debts before and during his marriage to his first wife. Applicant is unable to document his voluntary addressing of any of his listed debts. Altogether, all but three of his listed creditors remain unaddressed and unresolved. Besides the two small creditors he is credited with paying (creditors 1.c and 1.d), only his student loan indebtedness reflects any payment activity, and the weekly collection of this debt is the result of instituted involuntary garnishment action.

Security concerns are raised under the financial considerations guideline of the revised Adjudicative Guidelines where the individual applicant 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 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 past inability to pay these debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines DC ¶ 19(a), inability or unwillingness to satisfy debts, and ¶19(c) "a history of not meeting financial obligations."

Applicant's debts are attributable in part to his divorce from W1 and his ensuing inability to identify and address his listed delinquent accounts. Faced with so many pressing challenges to manage a new family, and still manage the responsibilities he faces with his new spouse and young son, Applicant has struggled somewhat to keep up. His progress to date in regaining control of his finances is still a work in progress that has been scarcely addressed to date. His finances remain clouded by numerous unresolved debts that require a good deal of effort on Applicant's part to fully stabilize them.

Based on his evidentiary showing, Applicant's proofs are insufficient to establish any material extenuating circumstances. As a result, he is not in a position to invoke MC ¶ 20(b) of the financial considerations guideline, "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, and the individual acted responsibly."

Mitigation credit is not available to Applicant either based on the facts of this case. Neither Applicant's oral or written proofs reflect any initiated voluntary repayment efforts in his behalf on most of his listed debts. Only a very recent written dispute filed with his credit reporting agency reflects any tangible action on his still unresolved debts. And this dispute letter does not unmistakably address any listed debt in the SOR. The only visible action taken on Applicant's debts to date are his own voluntary payments of his creditor 1.c and 1.d debts and the enforcement measures undertaken by Applicant's student lender. This being involuntary enforcement action, it can not qualify as a good-faith repayment effort in Applicant's behalf. So, based on his very limited payment efforts to date, Applicant may not take advantage of any of the remaining mitigating conditions covered in the financial guideline.

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).

Whole person assessment does not enable Applicant to surmount the judgment questions raised by his accumulation of delinquent debts. Since his divorce from W1 and remarriage to W2, Applicant has not shown enough tangible effort in addressing his covered debts to mitigate his still delinquent debts and credit him with restored control over his finances.

While Applicant provided some documentation of exhibited good judgment and trust in his work, he provided no endorsements from his supervisors, and a very limited performance evaluation, and/or other evidence of his company contributions to demonstrate his trust and reliability with his employer. In balance, whole person assessment does not enable Applicant to establish judgment and trust levels sufficient to enable him to overcome appraised security concerns arising out his accumulation of delinquent debts.

Taking into account all of the extenuating facts and circumstances surrounding Applicant's debt accumulations, the limited resources he has had to address them with, the limited steps he has mounted to address his old debts, it is still too soon to make safe predictive judgments about Applicant's ability to repay his debts and restore his finances to stable levels commensurate with his holding a security clearance.

Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a and 1.b and 1.e through 1.n. Favorable conclusions warrant with respect to subparagraphs 1.c and 1.d.

In reaching my decision, I have considered the evidence as a whole, including each of the E 2(a) 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-paras. 1.a and 1.b:	Against Applicant
Sub-paras. 1.c and 1.d:	For Applicant
Sub-paras. 1.e through 1.n:	Against Applicant

### **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