

KEYWORD: Financial

DIGEST: Applicant has a history of delinquent debts associated with his efforts to finance the development and marketing of his patented improvised explosive device (IED) detector for use by American military forces in Iraq and other areas of armed conflict. Choosing not to utilize other fund-raising options to finance his project while awaiting clearance decisions for himself and his company (such as Chapter 11 or 13 or licensing his technology to venture capitalists), Applicant accumulated over \$150,000.00 in delinquent credit card and student loan debts that he cannot currently repay with the limited resources at his disposal. Given the level of his carried debt loan and repayment uncertainty, he is unable to mitigate security concerns associated with his past history of delinquent debts. Clearance is denied.

CASENO: 07-02417.h1

DATE: 09/27/2007

DATE: September 27, 2007

In re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 07-02417
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
ROGER C. WESLEY**

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of delinquent debts associated with his efforts to finance the development and marketing of his patented improvised explosive device (IED) detector for use by American military forces in Iraq and other areas of armed conflict. Choosing not to utilize other fund-raising options to finance his project while awaiting clearance decisions for himself and his company (such as Chapter 11 or 13 or licensing his technology to venture capitalists), Applicant accumulated over \$150,000.00 in delinquent credit card and student loan debts that he cannot currently repay with the limited resources at his disposal. Given the level of his carried debt loan and repayment uncertainty, he is unable to mitigate security concerns associated with his past history of delinquent debts. Clearance is denied.

STATEMENT OF THE CASE

On May 10, 2007, 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 May 24, 2007, and requested a hearing. The case was assigned to me on June 21, 2007, and was scheduled for hearing on July 24, 2007. A hearing was held on July 24, 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 three exhibits, each containing multiple sub-parts. The transcript (R.T.) was received on August 8, 2007.

SUMMARY OF PLEADINGS

_____ Under Guideline F, Applicant is alleged to have accumulated 15 delinquent debts exceeding \$152,000.00. For his answer to the SOR, Applicant admitted each of the allegations covering his delinquent debts, and furnished numerous explanations of the debts and his repayment plan that is conditioned on his receiving Government grants to fund his patented device.

FINDINGS OF FACT

_____ Applicant is a 43-year-old adjunct professor and principal of a defense contractor who has held a security clearance since 1986 and seeks to retain his clearance. The allegations covered in the SOR and admitted by Applicant are incorporated herein and adopted as relevant and material findings. Additional findings follow.

Over the past ten years, Applicant has established a good reputation as a scientist, college professor and community college instructor. He has no history of breaking rules for safeguarding sensitive proprietary and classified information. He made a conscious choice in 2001, however, to finance the development and marketing of his three patented laser verification authentication Raman Spectrometer devices (Ivars device) through the use of credit cards and other debt financing means. He made this choice on the expectation his company (OFT) would obtain its required facility clearance, and be awarded a \$30 million defense contract for the licensed use of his patented Ivars device (*see ex. B(19)*). Applicant describes his Ivars as a laser-based system designed “to detect explosives both at point (within one meter), as well as at a distance, which could be hundreds, if not thousands, of meters” away (R.T., at 154). He claims available explosives detection systems tend to yield false negatives, which place soldiers serving in Iraq in harm’s way (R.T., at 167).

Even before Applicant’s company’s facility clearance was denied, however, the Army’s responsible approval organization informed Applicant’s company that it had decided not to pursue the company’s proposal (*see ex. A(12)*; R.T., at 138-40). The responsible organization cited the device’s described technique of remotely detecting and characterizing explosives as a technique that “is extremely high risk and unproven” (*see ex. A(12)*; R.T., at 145). The organization noted the proponents’ failure to construct any basic test prototype, as well as the absence of any included technical plan or analysis of how OFT expected to overcome detected technical obstacles (*ex. A(12)*). By contrast, the responsible approving organization noted the existence of other developmental techniques for remote detection of explosives that have been successfully prototyped and demonstrated (*A(12)*).

At no place in the responsible organization’s October 2006 response did it attempt to tie the proposal to its sponsor’s obtaining a facility clearance or suggest any potential for renewed interest in the proposal in the future. Despite assurances from Applicant and W3 that the Army’s responsible approval organization could be expected to look favorably on Applicant’s Ivars contract proposal once OFT obtained its facility clearance, neither provide any documentary support for this anticipated action. Certainly, there are no documentary assurances from the responsible organization or inserted contract conditions that would offer any realistic hope of reconsideration in the future (R.T., at 175). Under the circumstances, there are simply too many variables at this time to draw any meaningful inferences about the prospects of Applicant and his company’s obtaining Army approval of his device.

Applicant accumulated a number of delinquent debts (15 altogether) after 2001, mostly credit card-related, while developing three patented prototype IED detectors and seeking to obtain funding grants for the device from the responsible approving organization (*see ex. B-11 through 22*; T., at 80-95, 108-09). After incorporating his company in 1998, Applicant, to date, has been unsuccessful in raising grant money to develop and market his device for lack of collateral and has had to turn to “bootstrapping” techniques through his credit cards to raise the necessary funds to sustain his personal and professional needs (R.T., at 118). He briefly considered pursuing Chapter 11 relief, but he ultimately determined not to pursue bankruptcy out of concern for creditor attachment of his IED detector, in the event of payment default (R.T., at 162-63). While the vast majority of his accumulated delinquent debts represent cash withdrawals on his credit cards to fund his project, three of his listed debts represent student loans taken out to finance his wife’s education (creditors 1.I through 1.k) and, as such, are not directly linked to his business project (R.T., at 135-37). Altogether, he accumulated over \$21,000.00 in student loans.

The listed credit card accounts listed in the SOR bear the personal names of Applicant and his wife, and not his company, OFT (R.T., at 140-41). Applicant never pursued company credit cards or explored a business line of credit to finance his project because his company did not have any assets aside from his three patents to use as collateral (R.T., at 141, 159-61). Applicant never considered a business loan or home equity loan to finance his project. He not only does not own a home, but has no other appreciable assets to collateralize a loan besides his patents, which he does not wish to risk losing.

While he could perhaps generate capital contributions from his partners who contributed \$5,000.00 to \$10,000.00 each (five partners in all), and to a lesser extent from the four other investors who contributed small amounts to the project (R.T., at 142), he does not think such contributions would be sufficient to cover his cash needs on the project. Licensing his technology to raise venture capital is not an option either, because (again) he could run the risk of losing control of his intellectual property, which would be needed to collateralize any venture funding (R.T., at 160).

Applicant and his OFT company have worked hard to maintain control of their patents on the Ivars device he developed. He characterizes himself as the chief scientist and developer of the project covering the patented device (R.T., at 130-31, 169). At the present, he and his company continue to seek a facility clearance for his OFT company and a personal security clearance for himself, which he claims has been an unfulfilled condition to his firm's finalizing its \$30 million development contract with a major prime defense contractor, which wants his patented dual use device for use in meeting the latter's Army contracts (R.T., at 108-09, 146). Applicant assures his technology lacks any real U.S. competition and only a few foreign countries who are currently doing any known research in this IED detector area (R.T., at 164). He states the detector device has good dual use potential to the responsible Army reviewing organization due to its capability to eliminate both false positives and false negative signals for military vehicles operating in war zones. With the funds he expects from his company's finalizing its expected contract with the identified defense contractor, Applicant believes he will be able to pay off his accumulated delinquent debts from his company's expected contract award (R.T., at 106-07). Without the contract, though, he cannot see how he can pay any of his delinquent creditors, in which case he would expect to relocate and explore anticipated job opportunities for himself and his wife (R.T., at 107-08).

Married since 1999, Applicant characterizes his lifestyle as frugal. He has few tangible assets to claim as his own. Specifically, he claims his personal bank account as his only bank account, and he has no stocks, bonds, real estate, insurance policies, or interests in any companies other than his own company (*see ex. A-8 through 10*; R.T., at 97-98). He estimates his personal property to be no more than \$35,000.00 in total value. Standing alone, without any major contract support from the Army's approving organization, his patents lack any appreciable value (R.T., at 165).

Applicant and his company have both patent and corporate attorneys on retainer to protect his patent and corporate interests and to date have been successful in perfecting and protecting their patented Ivars device (*see exs. B(20) and B(21)*; R.T., at 92-96). Corporate counsel is responsible for administering and arranging all of his company and personal accounts associated with his patent and related business interests. Both Applicant and his spouse are pursuing advanced degrees to expand their employment opportunities (R.T., at 107). Applicant documents a fair credit score and a record of good credit before he turned to deficit financing in 2002 (or thereabouts) to fund his

patent investments (R.T., at 60-61). Should he and his company fail to obtain the defense contract they seek, he intends to pursue a banking career to pay off his debts (R.T., at 111).

Applicant currently takes home around \$2,800.00 a month; his wife is a full time student and currently does not contribute to their household income. He has around \$350.00 in his checking account (R.T., at 147), but no mutual funds or retirement plan that he could draw upon in times of emergency (R.T., at 148).

Applicant is highly regarded by former colleagues with whom he has shared academic and business pursuits in the scientific fields that Applicant has been involved in. W1 (a high level manager of a large financial institution) who has known Applicant since 1983 credits him with outstanding character and excellent earnings potential were he join his bank (R.T., at 12-14). While W1 is aware of Applicant's experiencing financial difficulties from funding his project, he has no knowledge of the specific debts and amounts. W2 is a former teaching colleague of Applicant's and recollects his achieving excellent reviews from his students (R.T., at 40). W2 is also unaware of Applicant's specific debts (R.T., at 42-43).

Another witness (W3) owns a specialty engineering firm that supports projects for the strategic intelligence community (R.T., at 47-48) and holds a top secret security clearance (R.T., at 70). Through his association with an Army electronic warfare testing program, W3 became with Applicant, who at the time was one of his professors (R.T., at 48). This missile program issued a contract to Applicant's firm in 2005, contingent on Applicant's obtaining his security clearance (R.T., at 48-49, 71-72). When Applicant was unable to obtain his clearance within conditioned time limits, this special agency within the Army testing program terminated the contract (in April 2007), with the understanding it could be renewed should Applicant obtain his security clearance (R.T., at 71). W3 is familiar with the security clearance process (having worked as a DSS personnel security adjudicator) and assures that because Applicant is the senior scientist with his contractor who owns the underlying patents, the approving agency will approve no contract for his company without his obtaining his security clearance (R.T., at 62-64). W3 expressed confidence in Applicant's intentions and ability to repay his debts, once the DoD contract was approved, but could point to nothing in writing that would confirm the agency's intention to renew OPT contract in the event Applicant and his country were to obtain their clearances (R.T., 71).

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.

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 an adjunct professor and principal of a closely held defense subcontractor who accumulated a number of delinquent debts in his effort to develop and market a patented lvars device. Some of his accrued delinquent debts relate to student loans for his wife, but most of his debts cover credit card debts from his use of his cards to generate cash withdrawals (a process he characterizes as "bootstrapping"). Considered together, Applicant's use of high risk fund-raising

techniques to underwrite his project raise security significant concerns under a personal security program that is grounded in the encouragement of low-risk behavior by the clearance holder.

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. Specifically, determined financial difficulties emanating from an applicant's inability to sustain his use of borrowing on his credit cards without falling far behind, and eventual delinquency, in the servicing of his financial obligations (in this case, credit card and student loan accounts) can place the person at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of delinquent debts and his past failures to document payments on any of her 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 inability to sustain his longstanding corporate and personal efforts to develop and market his patented Ivars device and finance his wife's education with very little personal or business capital at his disposal (save for the patents themselves and some limited funds of his own).

While Applicant's substantial debt accumulations are primarily linked to his persistent efforts to develop and market his company project and consummate a \$30 million contract with an elite Army agency, these debt accumulations cannot be considered to be unexpected given the substantial outlays required to develop an market the patented Ivars device and place it with the Government.

Fundamentally, Applicant chose a high risk ("bootstrapping") means to raise money for his project. While his earnest efforts to develop a valuable improvised explosive device detector are commendable, they reflect a high risk choice on Applicant's part that is at odds with the low risks associated generally with approved behavior and conduct under the Adjudicative Guidelines.

Mitigation credit is difficult for Applicant based on his lack of any presented repayment proofs and his still very speculative plan of repayment (conditioned on obtaining facility and personal security clearances and approval of a \$30 million Army agency contract for his patented detector device). As a result of his choices and sizeable amount of his still unresolved accrued debts, he make take little advantage of any of the Adjudicative Guidelines covering financial considerations. Age of the debts at issue is potentially applicable, given the collective age of most of these covered delinquent debts and potential applicability of pertinent statutes of limitation. Having some application, accordingly, is 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*). Because Applicant's decision to use his credit cards to employ "bootstrapping" techniques to finance his project represents conscious and deliberative actions on Applicant's part, his financing choices cannot be considered beyond his control. Put another way, a key requirement for invoking MC 20(b) of the financial consideration guidelines (*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)*) is missing.

Applicant reaffirms his intention to pay his outstanding debts and has resisted suggestions to petition for Chapter 11 or 13 bankruptcy relief. Due to his failure to seek financial counseling, however, he may not invoke MC 20(c) of the financial consideration guidelines (*the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*). Without any tangible repayment efforts to his credit, he may not invoke MC 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) either.

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). When high risk funding activities like Applicant's are assessed in juxtaposition to the relatively low-risk standards of the Adjudicative Guidelines, the former, generally must give way, no matter how potentially valuable the funded project might be to a particular defense department customer.

Applicant was not without alternative choices to his resorting to financing his project through his credit cards in hopes of his company's winning a contract from the approving Army organization. Licensing the patented technology to his partners, his company's prime contractor, or even a qualified outsider for a limited period with agreed upon return options was certainly one potential avenue to pursue while he and his company awaited the outcome of their facility and personal security applications, respectively. Drawing upon the capital resources of his partners and interested others was another possible option. With this option, Applicant might have been able to motivate potential investors with the prospect of an increased share in his patented projects. And, of course, he might have achieved something of a holding pattern with petitioned for Chapter 11 or 13 relief. True, all of these alternative courses of actions could have placed Applicant and his company at risk to lose control of the patented technology: either temporarily or permanently. Nonetheless, Applicant did have options at his disposal that did not involve his defaulting on \$152,000.00 plus in personal debts. The sheer size of these accumulated debt delinquencies is incompatible with the guidelines for establishing minimum eligibility for holding a security clearance.

That Applicant has enjoyed a distinguished and successful career in his scientific and teaching endeavors is not in dispute. By all accounts, he is a highly regarded scientist and inventor of technology that can potentially benefit the U.S. defense effort in Iraq and other war time theaters around the world. But even according maximum whole person credits to Applicant's worthwhile scientific and teaching achievements, minimum security clearance eligibility standards do not permit the level of relaxation of applicable adjudicative standards that Applicant seeks. If an exception is to be made in recognition of Applicant's special and valuable contributions to the defense effort, it cannot be made at this adjudicative level.

Taking into account all of the facts and circumstances surrounding Applicant's debt accumulations and lack of concrete steps taken to date to resolve them, Applicant fails to mitigate security concerns related to his covered debt delinquencies. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.o 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, 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
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 granted.

Roger C. Wesley
Administrative Judge
