



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



In the matter of:	)	
	)	
ARMOUR, Tom Ray, Jr.	)	ISCR Case No. 07-08732
SSN: 411-11-4878	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie R. Edmunds, Esquire, Department Counsel  
For Applicant: *Pro Se*

January 18, 2008

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**Decision**

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WESLEY, Roger C., Administrative Judge

**Statement of Case**

On August 15, 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 his clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on August 31, 2007, and requested a hearing. The case was assigned to me on October 10, 2007, and was scheduled for hearing on October 30, 2007. A hearing was held on October 30, 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 19 exhibits; Applicant relied on one witness (himself) and one exhibit. The transcript (R.T.) was received on November 7, 2007.

### **Procedural and Evidentiary Rulings**

Before the commencement of the hearing, Department Counsel moved to strike (a) the falsification allegations alleged under Guideline E and (b) the debt alleged in subparagraph 1.w for the stated reason that it was a duplicate of the debt alleged in subparagraph 1.d. For good cause shown, Department Counsel's motion was granted.

Prior to the close of the hearing, Applicant requested leave to supplement the record with documentation of financial counseling and resolution of his co-pay balances on his listed medical debts. There being no objection from the Government, and good cause being demonstrated, Applicant was granted 10 days to supplement the record. Within the time permitted, Applicant furnished (1) detailed plans for making payment arrangements in 2008 on his owed back child support, (2) documented financial counseling with Consumer Credit Counseling Services (CCCS), (3) copies of posted letters regarding medical coverage not used by his ex-wife for their child (for which he seeks a reduction credit on his child support), and (4) copies of documents pertaining to medical debts and a paid gas bill. There being no objection from the Government, and good cause being demonstrated, Applicant's post-hearing submissions were admitted as Applicant's exhibits I through M.

### **Summary of Pleadings**

Under Guideline F, Applicant is alleged to have incurred numerous delinquent debts: He is alleged (a) to owe the State's Attorney General (AG) for back child support in the approximate amount of \$28,048.00, and (b) to have incurred seven delinquent medical debts exceeding \$2,500.00 and 22 miscellaneous delinquent debts exceeding \$19,000.00.

Under Guideline E, Applicant is alleged to have falsified his security clearance application (SF-86) of August 2006, by denying any debts over 180 and 90 days delinquent, respectively.

For his response to the SOR, Applicant admitted his back child support debt and some of his other debts, but denied most of the alleged delinquent debts, claiming they were either paid or belonged to his deceased father or estranged wife. Applicant also denied any deliberate falsification of his SF-86.

### **Findings of Fact**

Applicant is a 59-year-old security officer of 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 served a number of years on active military duty with the Army between 1976 and 1999 (see ex. 1). He served four additional years of active reserve

duty with the Army National Guard between September 2000 and December 2003 (ex. 1).

Applicant has been employed by his current employer since November 2003 (ex. 1). Applicant married his first wife in 1988; this marriage ended in divorce in 1992 (see ex. 1; R.T., at 25). He has two children from this marriage, but only his daughter survived (R.T., at 24-25). This daughter was born in January 1991 and was adopted by Applicant and W1 before their divorce the following year (ex. 1). As a part of his divorce from W1, W1 was granted sole custody of his daughter. The court's child support order awarded W1 child support of \$250.00 a month (R.T., at 25-26).

Before his divorce was final, W1 and his daughter relocated to Mexico for a brief time. For several months following her return, Applicant made his required child support payments to W1. Then she left the area, and Applicant could "never get a good address on her" for mailing her child support payments (R.T., at 27). After she departed State 1, Applicant claims he tried in vain to make his required child support payments to State 1's child support office, only to be told they could not take his payments due to "international or interstate" implications (R.T., at 26). When Applicant finally learned of W1's whereabouts in 2003, he relocated to State 2 and attempted to settle his child support differences with her (see ex. 1; R.T., at 27-28).

Beginning about 10 years after she obtained a garnishment order for child support arrearage, W1 located him in State 1 and enlisted the AG in the State to begin garnishing his wages to cover his back child support obligations. Presumably, the AG of State 1 initiated garnishment proceedings in response to a court order following a fully noticed child support show cause proceeding. It seems most likely, too, that a show cause proceeding would have been opened only after failed efforts by W1 and the local child support office to establish a reliable withholding mechanism for collecting current and past due child support obligations from Applicant. Without a paper trail in this proceeding to establish what happened to prompt the State 1 AG to initiate garnishment against Applicant, it is simply impossible to establish a pre-garnishment record. All that can be inferred from this record is that the AG of State 1 initiated garnishment of Applicant's pay before 2003 to enforce collection of both the current child support and the sizeable arrearage Applicant had built up since 1992 (by this time over \$28,000.00). By Applicant's acknowledgments, he has not been able to make much progress in resolving the arrearage and suspending the ongoing garnishment action.

Since relocating to State 2 in 2003, Applicant has tried to negotiate a settlement of the child support arrearage with W1, but without any success. While he believes W1 is ready to settle his arrearage, he anticipates problems with State 2's AG in working out an arrearage settlement without the official blessing of State 1 (R.T., at 29). Applicant has since engaged an attorney to negotiate a settlement with State 1, but in the meantime, State 2's AG continues to garnish his wages at the rate of \$375.00 a month (R.T., at 30). This breaks down as follows: \$250.00 towards his current child support and \$125.00 towards his arrearage. To date, Applicant and his engaged attorney have not been able to reach an arrearage settlement with either State 1 or State 2 (see ex. 1; R.T., at 30).

Since his divorce from W1, Applicant has continued to pay for his daughter's medical insurance, and seeks an unspecified credit of his paid medical premiums towards medical insurance he made available for his daughter's benefit. W1 apparently did not make use of the medical insurance available for their daughter (see exs. I).

Applicant remarried to W2 in 1998 and has no children from this marriage. (R.T., at 61-62). He separated from W2 in 2003, and last year he initiated divorce proceedings against her.

Besides his accumulated child support arrearage, Applicant has accumulated a number of delinquent medical debts associated with the care of his child. These debts are seven in number and represent co-pay obligations he never paid (R.T., at 58). These debts exceed \$2,500.00 in amount. His other delinquent debts represent miscellaneous consumer debts and exceed \$19,000.00. The largest of these listed debts represents a deficiency balance of \$11,362.00 on a vehicle that was repossessed in July 2005 (see exs. 1 and 3).

At hearing, Applicant expressed interest in working with CCCS to resolve his debt delinquencies and contacted the counseling service several weeks before the hearing (R.T., at 70). In December 2005, he entered into a counseling service arrangement with CCCS, which he documented in his post-hearing submissions (see ex. J). Budgeting and payment arrangements are not documented, however, and Applicant does not establish a consolidated payment plan for paying off his remaining debts. Whether he will be able to establish a viable repayment plan with his CCCS counselors at this time is uncertain.

In May 2006, Applicant injured his back on the job and was laid off work for almost a year (R.T., at 30). He was awarded \$9,000.00 in workman's compensation and used the money to take care of his necessities, pay his bills, and purchase a car (a 1992 BMW 525 model) for \$6,000.00 (R.T., at 62-63). His credit reports reflect a lack of child support garnishment for the better of a year (see exs. 2 and 3). Since returning to work, he nets only about \$200.00 a week from his private security job after garnishments (R.T., at 65) and holds a second job with a U.S. agency that pays him \$450.00 every two weeks (R.T., at 65-66). Applicant owns no stocks or bonds. With his current combined income, he does not have much left (even with two jobs) to address his outstanding debts after covering his current living expenses (R.T., at 66-67).

Applicant petitioned for Chapter 13 relief in 1992. He was still married to W2 at the time, but was legally separated (R.T., at 71). His scheduled debts totaled about \$7,000.00. Under the court's approved plan he paid \$150.00 a month to the bankruptcy trustee over a five-year period and was discharged by the bankruptcy court supervising his plan (R.T., at 72).

Since receiving the SOR, Applicant is able to demonstrate the payment of some of his listed smaller debts. He documents payment of his debts to creditor 1.j (ex. A), 1.m (ex. B), creditor 1.q (ex. D), creditor 1.r (ex. E), creditor 1.x (ex. F), creditor 1.bb (ex. G), and creditor 1.w (ex. M). His printouts of allowed insurance benefits covering his medical debts with creditors 1.b and 1.d through 1.h (ex. H) reflect reduced debt

balances on these medical obligations. And he documents a settlement of his largest consumer debt, creditor 1.n, with a \$5,000.00 payment through a transfer from a newly approved VISA credit card account (see exs. C and D). With this \$5,000.00 payment, the creditor agreed to forgive the remaining \$6,900.00 of the deficiency balance. Still not resolved, though, are the remaining delinquent debts that total approximately \$6,000.00.

## **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.

### **Analysis**

Applicant is a security officer for a defense contractor who accumulated a number of delinquent debts over the past fifteen years (much of which he spent on active military duty). Some of the debts cover back child support referred to the AGs of two States for collection (over \$28,000.00); others cover medical debts associated with the care of his daughter (about \$2,500.00 in the aggregate); while the remainder cover miscellaneous debts compiled since he completed his Chapter 13 wage-earner's plan over 10 years ago.

Security concerns are raised under the financial considerations guideline of the Regulation where the individual applicant is so financially overextended that he or she is at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of delinquent debts and his failure to document payments on most of them (including his back child support dating at least to 1992) warrant the application of two of the disqualifying conditions (DC) of the revised Adjudicative 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 attributes his considerable child support arrearage to years of communication difficulties with W1. He claims he tried to work with his local child support agency in State 1 to fund his child support obligations but was rebuffed for cited international residence issues concerning W1. It is Applicant's position that he was effectively prevented from using available child support services to make his ordered child support. It was these actions of W1 and the local child support agency (according to Applicant) to essentially block his child support compliance efforts, and not his own neglect, that created the large arrearage that resulted in the AG of State 1 instituting garnishment measures to enforce the support order.

Difficulties arise in validating Applicant's claims: They stem from the lack of any documented paper trail. Logically, before such an arrearage could have reached garnishment status in State 1, an enforcement order would have been needed. And before such an order could have rightfully issued, a hearing could be expected to have been noticed that would have enabled both W1 and Applicant to plead their respective cases for appropriate relief. Applicant has provided no historical accounting of pre-

garnishment official proceedings. Even if he did not know W1's whereabouts until 2003, he could reasonably be expected to have provided some kind of historical account of the AG's garnishment initiatives in State 1. Without any documentation, we are left to speculate as to the kind of paper record that prompted State 1's AG to initiate garnishment actions to enforce child support arrearage covering more than 10 years of child support obligations.

The new Adjudicative Guidelines do not permit credit for disputed claims without documented proof to substantiate the basis of the dispute. MC 20(e) is very specific in this regard: It warrants application only when ("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 issues"). Applicant's explanations of the chronology of events that precipitated the State 1 AG's initiation of garnishment action in 2003 are neither documented nor explained by probative evidence. A credible showing of extenuating circumstances associated with his child support arrearage requires at least some documentation of past Applicant efforts to satisfy his child support obligations before they reached garnishment status.

Applicant's more recent efforts to dissolve the garnishment actions of State 2 through settlements with W1 and the AGs of both States are understandable and plausible. It is not clear, though, how he could effectively reach a global child support agreement with the income resources he currently has to work with. He has engaged an attorney to work out a settlement, and he is credited with good faith in attempting to reach an accord satisfactory to W1 and the interested State AGs.

To a limited extent in this case, Applicant's accrued debts merit extenuation credit. Both his child support repayment efforts and his payment of his other debts have been extenuated by his financial and health setbacks associated with his work-related accident in 2006. Under these recounted circumstances, 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") of the mitigating conditions (MC) of the guidelines for financial considerations has some application to Applicant's situation.

To Applicant's credit, he has made concerted efforts to address his debts since receiving the SOR. He is able to document payment and/or settlement of many of his listed delinquent debts, including many of his smaller medical and consumer debts and his debt deficiency associated with his 2005 repossession. While he failed to provide any follow-up payment documentation covering any of his remaining creditors, he assures he is continuing to work on these as well. He reinforces his commitments with initiated credit counseling with a reputable credit counseling service (CCCS). Based on his encouraging repayment and counseling efforts to date, he may take advantage of several of the mitigating conditions (MC) of the financial considerations guideline. MC 20© ("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"), as well as MC 20(d) ("the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts").

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of good judgment, reliability and trustworthiness. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance.

Applicant's accumulated debts over the past 15 years have been considerable. When faced with delinquent debts in 1992 following his marriage break-up, he resolved them responsibly with a completed Chapter 13 plan. Resolving his child support arrearage has proved more difficult to resolve, and it is still unclear whether he will be able to settle his child arrearage that has been reduced to garnishment with his current resources. At this time, it remains highly likely that Applicant will be subject to continued arrearage payments for many years, barring a settlement between W1 and the respective interested states. Concerning his remaining delinquent debts, he documents payment of some (including his deficiency balance on his car repossession), settlement with others, and no actions with the remaining creditors. His very limited income sources might best explain his lack of any established payment budget and documented repayment plan with the CCCS firm he has engaged.

Overall, Applicant still leaves too many questions unanswered regarding the historical background of his child support garnishment initiatives and his steps taken to identify his remaining unpaid creditors and implement a consolidated repayment plan with the CCCS firm he has engaged. Whether his lack of documented efforts to resolve the remainder of his creditors is the result of information or resource deficits is not clear, but the necessary documentation and/or probative showing of a concrete repayment plan is clearly missing from Applicant's proofs. While he is to be commended for the steps he has taken to resolve his debts with the two jobs he is currently working, his attempts to stabilize his finances remain a work in progress and require more seasoning before safe predictions can be made about his eligibility to hold a security clearance.

Taking into account all of the facts and circumstances surrounding Applicant's debt accumulations and ongoing efforts to resolve his child support arrearage and pay off his remaining debts, Applicant fails to mitigate security concerns related to his longstanding debt delinquencies. Unfavorable conclusions are drawn with respect to the allegations covered by subparagraphs 1.a , 1.c, 1.l, 1.k and 1.l, 1.o and 1.p, 1.s through 1.v, 1.y through 1.aa, and 1.cc and 1.dd. Favorable conclusions warrant with respect to subparagraphs 1.b, 1.d through 1.h, 1.j,1.m, 1.n, 1.q, 1.r, 1.w, 1.x, and 1.bb.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, 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:	FOR APPLICANT
Sub-para. 1.c:	AGAINST APPLICANT

Sub-para. 1.d:	FOR APPLICANT
Sub-para. 1.e:	FOR APPLICANT
Sub-para. 1.f:	FOR APPLICANT
Sub-para. 1.g:	FOR APPLICANT
Sub-para. 1.h:	FOR APPLICANT
Sub-para. 1.i:	AGAINST APPLICANT
Sub-para. 1.j:	FOR APPLICANT
Sub-para. 1.k:	AGAINST APPLICANT
Sub-para. 1.l:	AGAINST APPLICANT
Sub-para. 1.m:	FOR APPLICANT
Sub-para. 1.n:	FOR APPLICANT
Sub-para. 1.o:	AGAINST APPLICANT
Sub-para. 1.p:	AGAINST APPLICANT
Sub-para. 1.q:	FOR APPLICANT
Sub-para. 1.r:	FOR APPLICANT
Sub-para. 1.s:	AGAINST APPLICANT
Sub-para. 1.t:	AGAINST APPLICANT
Sub-para. 1.u:	AGAINST APPLICANT
Sub-para. 1.v:	AGAINST APPLICANT
Sub-para. 1.x:	FOR APPLICANT
Sub-para. 1.y:	AGAINST APPLICANT
Sub-para. 1.z:	AGAINST APPLICANT
Sub-para. 1.aa:	AGAINST APPLICANT
Sub-para. 1.bb:	FOR APPLICANT
Sub-para. 1.cc:	AGAINST APPLICANT
Sub-para. 1.dd:	AGAINST APPLICANT

### Conclusion

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

