

DATE: November 15, 2007

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In Re:)	
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-----)	ISCR Case No. 07-01162
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
BARRY M. SAX**

APPEARANCES

FOR GOVERNMENT

Jennifer I. Goldstein, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 57-year-old security officer has a history of financial problems that continues to exist. She has not made any significant effort to resolve most of her 17 delinquent debts. She intentionally answered "No" to two financial-related questions on her security clearance applications(SF 86) when she admittedly knew of the debts. Mitigation has not been established. Clearance is denied.

STATEMENT OF THE CASE

On April 18, 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, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On June 18, 2007, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The case was assigned to me on September 12, 2007. A Notice of Hearing was issued on September 24, 2007, setting the hearing for October 23, 2007. At the hearing the Government introduced four (4) exhibits (Government Exhibits (GX) 1-4). The Applicant testified, but did not offer any exhibits. The transcript was received on November 2, 2007.

FINDINGS OF FACT

Applicant is a 57-year-old security officer for a defense contractor. The February 24, 2005 SOR contains seventeen (17) allegations under Guideline F (Financial Considerations) and two (2) allegations under Guideline E (Personal Conduct). Applicant admits all 17 allegations under Guideline F, but did not admit nor deny the Guideline E allegations. The Guideline F admissions are accepted and incorporated herein as Findings of Fact. The absence of any comment to the Guideline E allegation is deemed a denial.

After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the status of each SOR allegation.

Guideline F (Financial)

Applicant has a history of 17 past due debts (delinquent, charged off, referred for collection, or reduced to judgment) to the following creditors in the approximate amounts cited:

- 1.a. - Collection Account A -----71.00.
- 1.b. - Collection Account B ----- \$3,986.00.
- 1.c. - Collection Account C -----\$83.00.
- 1.d. - Charged Off Account D -----\$1,531.00.
- 1.e. - Charged Off Account E -----\$75.00.
- 1.f. - Charged Off Account F -----\$788.00.

- 1.g. - Collection Account G ----- \$127.00.
- 1.h. - Collection Account H ----- \$5,755.00
- 1.i. - Collection Account I -----\$4,075.00
- 1.j. - Collection Agency J -----\$1,359.00.
- 1.k. - Collection Agency K -----\$532.00.
- 1.l. - Charged Off Account L ----- \$7605.00
- 1.m. - Charged Off Account ----- \$165.00
- 1.n. - Collection Agency N -----\$971.00.
- 1.o. - Collection Agency -----\$104.00.
- 1.p. - Collection Agency P ----- \$1,464.00.
- 1.q. - Collection Account Q -----\$1,417.00.

Guideline E (Personal Conduct)

2.a- Applicant falsified material facts on his Security Clearance Application (SF 86) of November 28, 2005, as to Question **28 Your Financial Delinquencies** [in last seven years], "have you been over 180 days delinquent," to which Applicant replied "No," and omitted any mention of the delinquent debts cited under SOR 1.b., 1.c., 1.m., 1.n., 1.o., and 1.q., above.

2.b. - Applicant falsified material facts on her SF 86 November 28, 2005 as to Question **28 Your Financial Delinquencies** - [are you currently delinquent over 90 days], to which Applicant replied "No" and omitted the delinquent debts cited in SOR 1.b., 1.c., 1.m., 1.n., 1.o., and 1.q., above.

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant to the conduct, to include knowing participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are

denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

CONCLUSIONS

Applicant is 57 years old security officer at a major defense contractor.

Guideline F (Financial Considerations)

In her response to the SOR, Applicant admits, without explanations, all 17 allegations of delinquent debts. At the hearing, she admitted that the debts are still delinquent and that she has not made any significant effort to resolve most of them. The record indicates that some of the delinquent debts resulted from her period of unemployment, which began in 2002 and ended in 2004, when she began her present employment with a defense contractor (Tr at 18). During part of the period of unemployment, she received disability payments because of a bad back (Tr at 26). She was also taking care of up to four foster children, two of whom are still with her (Id.). These are two boys, seven and eight. She receives \$630 per month for each boy. She is seeking "long-time guardianship" which, if granted, would result in a lowering of the monthly payments to about \$400 per month (Tr at 22).

She was married in the 1970s and has three grown children, 40, 39, and 24 (Tr at 27). The youngest has medical problems and is unable to work. Applicant helps him out financially (Tr at 27).

As Department Counsel read off the list of creditors, Applicant's reply and explanation was basically that she admitted the debts but was unable to do anything about them, because of a continuing lack of funds (Tr at 29-38).

At present, her income

is just enough to make my bills - survive off of now –and I was just not able to pay any of the bills right now. I am aware of the bills that I have to pay. Right now, I can't even see any light where I can put any money on the bills (Tr at 19).

Applicant began making \$59 payments on one account, but then stopped. She does not deny the bills, but states she has "just had a bad time" (Id.). It has been several years since she was in contact with some of the delinquent creditors (Tr 37-39). I note that as to the creditors cited in 1.f. and 1.k., she purchased clothing and merchandise valued at \$788 and \$532, respectively. How she spends her income is, of course, her business, but in the context of her poor financial condition, it raises questions about her financial judgment and maturity.

Her current monthly income is about \$1,600 to \$1,700. She also receives about \$1,260 intended for the care of her two foster children (Tr at 46 -55). She has no money left over each month and had to borrow money to come to the hearing (Tr at 55). She has no credit cards and no checking account, no 401(k) and no savings (Tr at 56)

On cross-examination, she stated that she was a security officer for a defense contractor, meaning she carried a firearm and patrolled the facility (Tr at 20).

In Applicant's own words, it is clear that she has been in a difficult financial position for some years and there does not appear to be any likelihood of relief in the foreseeable future. There have been many Guideline F cases in the past wherein an Applicant was unemployed or under-employed and had minimal income. In such cases, it is common for there to be difficulties in paying off debts, but many Applicants have demonstrated some degree of financial rehabilitation. This can be accomplished by making arrangements directly with the creditors to pay off the debts or by using acceptable other means of resolving the delinquent debts. These arrangements include, but are not limited to, filing for bankruptcy protection and seeking the help of a consumer credit counseling service, to act in her behalf in resolving debts, often at a lower amount and in installments. Such effort can be entitled to considerable weight in evaluating current eligibility. In the present case, I have carefully considered Applicant's credibility as to her intent and ability to resolve all of the cited delinquent debts. I am unable to give much credibility to her claims because she has done little or nothing to demonstrate serious action.

Under Guideline F (*Financial Considerations*):

Disqualifying Conditions (DC) 19.(a) inability or unwillingness to satisfy debts, and 19 (c) history of not meeting financial obligations, have been established by the Government's evidence of record. No mitigating conditions have been established.

Under Guideline E (Personal Conduct), SOR 2.a and 2.b., Applicant admits she was aware of the delinquent debts cited in the SOR and still knowingly stated "No" when asked about debts that were more than 180 days delinquent within the previous seven years or currently more than 90 days past due.

Her explanations include claims of confusion and misunderstood advice. What is most troubling is her statement that she answered "No" because she did not know the exact status or amounts due as to each and every debt. But, the SF 86 does not contain any explanation for the "No" answers. When asked why she didn't answer "Yes" and attach an explanation about any lack of detailed knowledge, she did not really explain her conduct. I find her claim that a facility security officer told her that it did not matter how she answered the two questions, to lack credibility. In addition, in signing the SF 86, she swore that her answers to all questions were true, accurate, and complete to the best of her ability, and she knew she had not complied with this requirement.

The record establishes, without rebuttal, that Applicant deliberately falsified her answers to Questions 28.a. and 28.b., both of which were relevant and material to establishing her security clearance eligibility. Disqualifying Condition 16.(a). the deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . has been shown, but no mitigating conditions have been demonstrated.

Overall, Applicant has not come close to overcoming the evidence supporting the Government's concerns, as stated in the SOR. It is not necessary to question Applicant's sincerity to conclude that she has simply not demonstrated that she possesses the good judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline F (Financial Considerations)	Against the Applicant
Subparagraph 1.a.	Against the Applicant
Subparagraph 1.b.	Against the Applicant
Subparagraph 1.c.	Against the Applicant
Subparagraph 1.d.	Against the Applicant
Subparagraph 1.e.	Against the Applicant
Subparagraph 1.f.	Against the Applicant
Subparagraph 1.g.	Against the Applicant
Subparagraph 1.h.	Against the Applicant
Subparagraph 1.i.	Against the Applicant
Subparagraph 1.j.	Against the Applicant
Subparagraph 1.k.	Against the Applicant
Subparagraph 1.l.	Against the Applicant
Subparagraph 1.m.	Against the Applicant
Subparagraph 1.n.	Against the Applicant
Subparagraph 1.o.	Against the Applicant
Subparagraph 1.p.	Against the Applicant
Subparagraph 1.q.	Against the Applicant

Guideline E (Personal Conduct) Against the Applicant

Subparagraph 2.a

Against the Applicant

Subparagraph 2.b.

Against the 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 a security clearance for Applicant.

BARRY M. SAX
ADMINISTRATIVE JUDGE