

KEYWORD: Financial

DIGEST: This 58-year-old employee of a defense contractor has a history of financial problems beginning as early as 1995 and remaining unresolved. The delinquent debts currently exceed \$36,600.00. No mitigation has been established. Clearance is denied.

CASENO: 06-21253.h1

DATE: 05/30/2007

DATE: May 30, 2007

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In Re:)	
)	
-----)	ISCR Case No. 06-21253
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
BARRY M SAX**

APPEARANCES

FOR GOVERNMENT

Jeff Nagel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 58-year-old employee of a defense contractor has a history of financial problems that began in 1995 and remain unresolved. The delinquent debts currently exceed \$36,600.00. No mitigation has been established. Clearance is denied.

STATEMENT OF THE CASE

On February 2, 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 February 23, 2007, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge. A Notice of Hearing was issued on April 17, 2007 and the hearing was conducted on May 11, 2007. At the hearing, the Government introduced five (5) exhibits (Governments Exhibits (GX) 1-5. Applicant testified and introduced one (1) exhibit (Applicant's Exhibit (AX) A. The transcript was received on May 2007.

FINDINGS OF FACT

Applicant is a 58-year-old employee of a defense contractor. He admits all 15 allegations 1.a. - 1.o. The admitted allegations are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence of record, I make the following findings as to each SOR allegation:

Applicant served in the Marine Corps from 1967-1970, and part of the time had a security clearance (Tr at 27). He served in Vietnam and received an Honorable Discharge (Tr at 25, 26). His financial problems began in 1995-1997, when he and his wife were simply not earning enough money and began to fall seriously behind on a number of debts. At one point, his wife lost her job (Tr at 29). He began to use credit cards to cover operating expenses and fell further and further behind (Tr at 20).

They lost their house and moved in with a friend, as a result of which the bills stopped coming and were simply ignored (Tr at 21). Some debts were recovered by the creditor's garnishing of Applicant's wages (Tr at 21). Applicant admits using poor judgment when he began spending more than he and his wife were bringing in (Tr at 22). He canceled his credit cards, and has not obtained any new ones (*Id.*). He claims an ability to keep up with current expenses, but has done little or nothing to resolve the delinquent debts cited in the SOR (Tr at 22).

Guideline J (Financial Considerations)

1.a. - Bank A -\$7115.00, including \$5,000 in original debt, plus interest (Tr at 28).

1.b. - Bank B - \$3274.00

- 1.c. - Creditor C - \$3,676.00
- 1.d - Creditor D - \$4,060.00
- 1.e. - Collection Agency E - \$2541.00
- 1.f. - Creditor F - Creditor F - \$3,035.00
- 1.g. - Creditor G - \$1,964.00
- 1.h. - Creditor H - \$1,597.00
- 1.i. - Gasoline Company J -\$639.00. This debt began as \$394 (Tr at 33).
- 1.j. - Credit Agency J - \$182.00
- 1.k. - Creditor K - \$3,170.00
- 1.l. - Creditor L - \$4,000.00
- 1.m. - Financial Company M - \$811.00
- 1.n. - Credit Company N - \$277.00
- 1.o - Creditor) - \$255.00

The above delinquent debts total about \$36,606.00. Applicant admits that all of the debts are his (Tr at 32) and also admits he remains responsible for all of them, even though some of them have dropped off recent credit reports (Tr at 30). His wife is not working at present. He currently nets about \$900 every two weeks.

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding 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 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.

Under Guideline F, an individual may be disqualified if available information reflects a recent or recurring pattern of questionable financial judgment and conduct.

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. In reaching the fair and impartial overall common sense determination based on the “whole person” concept required by the Directive, the Administrative Judge is not permitted to speculate, but can only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses, here based solely on the written record.

In the defense industry, the security of classified information is entrusted to civilian workers who must be counted on to safeguard classified information and material twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an applicant for a security clearance, in his or her private life or connected to work, may be involved in conduct that demonstrates poor judgment, untrustworthiness, or unreliability. These concerns include consideration of the potential, as well as the actual, risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information

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. I find that the financial issues in question do raise security concerns under Directive Guideline F.

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

As of the hearing, none of the debts cited in the SOR had been resolved by any payments by Applicant, or by any means of resolution. Applicant did consider filing for bankruptcy protection at one point, but did not follow through (Tr at 20).

Applicant submitted only one document, a credit report dated May 6, 2007 (AX A), and pointed out that many of the debts were no longer cited. However, from his testimony, it is obvious that the reason for the deleted entries was the passage of time, and not anything Applicant had done to resolve the debts. I informed Applicant that the removal of entries from credit reports because of the passage of time did not automatically mean that the debts were no longer owing, and it certainly did not demonstrate financial rehabilitation or indicate good judgment, reliability, or trustworthiness. Applicant conceded this point. He has in the past paid off five small delinquent debts not cited in the SOR, but has not yet demonstrated any substantive efforts to resolve the cited

delinquent debts, including the larger ones (Tr at 43, 44). As to these debts, he has “done nothing in the last 10 or 11 years “ (Tr at 47).

The record contains sufficient evidence to show that there is no question about Applicant’s loyalty to his country. The problem is that his financial conduct raises concerns under Guideline F that have not been mitigated or extenuated. There are clearly things he could have done that would demonstrate financial rehabilitation, but Applicant has simply not carried through.

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 and 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.

Conditions that could raise a security concern and may be disqualifying include: 19.(a) Inability or unwillingness to satisfy debts; and 19.(c) history of not meeting financial obligations.

Conditions that could mitigate security concerns include: None that are established by the record. Under the Directive’s whole person concept, I come to the same conclusion. In summary, the Government’s evidence makes a prima facie case against Applicant. Despite Applicant’s efforts to take care of his family, his inability to get control of his finances over more than a decade necessarily raises questions about his judgment, reliability, and trustworthiness. Guideline F is explicit as to what kind of conduct DoD considers to be disqualifying.

At the same time, I am unable to conclude that any of the parallel Mitigating Conditions are applicable; e.g., 20.(a) - the debts remain current; 20.(b), 20.(c) and 20.(d) - although the incurring of some of the debts may have resulted in part from conditions beyond his control, the long period of time during which no substantial resolution took place prevents application of the this mitigating condition. The evidence compels the conclusion that Applicant currently lacks the 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

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