

DATE: February 26, 2004

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-10124

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 41-year-old plant protection officer has had significant financial problems dating back to at least 1996, and which are not yet resolved. In both a security clearance application and in interviews with DSS, he failed to mention any of these financial problems, any of his three alcohol-related arrests, and his leaving a prior position after he had been told he would otherwise be terminated. His falsifications are criminal violations of 18 U.S.C. 1001. His explanations do not constitute adequate mitigation. Clearance is denied.

STATEMENT OF THE CASE

On February 11, 2003, 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 April 23, 2003, Applicant responded to the allegations set forth in the SOR. However, as noted in a letter from a DOHA Personnel Security Specialist, dated May 7, 2003, Applicant did not admit or deny each allegation, he did not indicate whether he wanted a hearing or a determination made without a hearing, and his answer was not made under formal oath or affirmation. Applicant was given a 10-day extension to correct these deficiencies. On June 9, 2003, DOHA received a corrected submission, in which he elected to have a hearing before a DOHA Administrative Judge. The case was assigned to me on September 17, 2003. A Notice of Hearing was issued on September 25, 2003, and the hearing was conducted on November 6, 2003. At the hearing, the Government did not call any witnesses but introduced 12 exhibits, which were marked and admitted as Government Exhibits (GX) 1 - 12. Applicant testified but did not offer any exhibits. The transcript was received at DOHA on November 14, 2003.

In his response, Applicant admitted, with explanations, all of the allegations in the SOR. Each of these admissions is incorporated herein as a findings of fact.

FINDINGS OF FACT

Applicant is a 41-year-old plant protection officer. The SOR contains 14 allegations under Guideline F (Financial Considerations), eight allegations under Guideline E (Personal Conduct), and four allegations under Guideline J (Criminal Conduct). In his response, Applicant admits all 14 allegations under Guideline F; admits allegations 2.e., part of 2.f., and 2.g. and denies allegations 2.a., 2.b., 2.c., 2.d., and 2.h. under Guideline E; and admits allegations 3.b., and 3.d., but denies allegations 3.a. and 3.c. under Guideline J Applicant's factual admissions, as cited above, are adopted as Findings of Fact.

After considering the totality of the evidence derived from Applicant's testimony and all exhibits, I make the following additional FINDINGS OF FACT as to each SOR allegation:

Guideline F (Financial Considerations)

As of February 11, 2003, Applicant was indebted to the following creditors in the amounts cited:

1.a. - Medical Center A - a bad debt of \$100 due since May 1996.

1.b. - Bank B - a debt of \$1,161 that was 30 days past due.

1.c. - State A Superior Court - unpaid child support of \$970 for his daughter, some of which had been recovered by garnishment.

1.d. - State B Child Support Service - unpaid child support and accrued interest of \$44,140.19 for his daughter, some of which has been recovered by garnishment.

1.e. - U.S. Department of Education - bad debt since 2001 of \$29,039.70 for student loans

1.f. - Internal Revenue Service - a federal tax lien for \$8,380.74 for tax years 1997 and 1999.

1.g. - Applicant's Personal Financial Statement (PFS) of February 12, 2002, showed that Applicant was financially able to make payments on the debts cited in SOR 1.a., 1.b., 1.c., and 1.f

Guideline E (Personal Conduct)

2.a. - 2.d. allege falsifications by Applicant in response to four separate questions on his August 13, 1999 security clearance application (SF 86). In response to:

2.a. Question **34. Your Financial Record - Wage Garnishment**, "In the past seven years, have you had your wages garnished for any reason," Applicant improperly answered "No" and omitted any mention of the garnishments cited in SOR 1.c. and 1.d., above.

2.b. Question **36. Your Financial Record - Tax Lien**, "In the last seven years, have you had a lien placed against your property?" Applicant improperly answered "NO" and omitted any mention of the federal tax lien cited in SOR 1.f., above;

Applicant received positive letters of support from several individuals who know Applicant from work (AX A - AX C). They view Applicant as dedicated to his work and a man they respect.

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 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.

Because each security case presents its own facts and circumstances, it should not be assumed that the factors cited above exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or emotionally unstable behavior.

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to this case:

GUIDELINE F (Financial Conduct)

The Concern: 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:

1. A history of not meeting financial obligations;
3. Inability or unwillingness to satisfy debts

Conditions that could mitigate security concerns:

None that are applicable under the facts of this case.

GUIDELINE E (Personal Conduct)

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information;

Conditions that could raise a security concern and may be disqualifying include:

2. Deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, or similar forms used to conduct investigations . . . ;
3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator . . . in connection with a personnel security or trustworthiness determination;

Conditions that could mitigate security concerns:

None that are established under the facts of this case.

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 Directive's "whole person" concept, I am 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.

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 or work life, 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 an applicant's admissions or by other evidence) and establishes 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

I have considered the evidence in light of the appropriate legal standards and factors, and have assessed Applicant's credibility based on the entire record. I conclude the totality of the evidence establishes a *prima facie* or initial case as to all SOR allegations, and the proven misconduct in turn establishes a nexus or connection with Applicant's security clearance eligibility. The issue remains however as to whether Applicant had established mitigation of all or any of the allegations.

In his response to the SOR, Applicant explained that the debt alleged in 1.a. was being disputed; that the debt alleged in 1.b. was in the process of being resolved by negotiation; that the debt alleged in 1.c. had been paid off; that the delinquent debt alleged in 1.d. remained but that he was making payments on his current child support; that he has been trying to negotiate a settlement with the creditor cited in 1.e., but the creditor has asked for more than Applicant could afford to pay; the tax debt cited in 1.f. remains delinquent as cited because Applicant does not have the income to make payments; Applicant's available income, as alleged in 1.g., remained insufficient to make any payments on the cited delinquent debts. As to allegation 2.a., Applicant stated that when he completed the SF 86, he did not have any garnishments against him.

First, I conclude that all of the SOR allegations are derived from and supported by the Government's 12 exhibits and that the exhibits establish a *prima facie* case against Applicant's eligibility to hold a DoD security clearance. In other words, the burden of proof is now on Applicant to show that despite the negative evidence in the 12 documentary exhibits, it is nonetheless clearly in the interests of national security to grant or continue a security clearance for Applicant.

Since Applicant has not provided any documentation relating to his incurring of the debts in question, their present status (as of the hearing date), and demonstrated financial rehabilitation (by paying the debts or otherwise resolving them), his evidence is limited to (and ends with) his hearing testimony on November 6, 2003. Discussing each allegation, Applicant testified that he has not yet moved beyond continuing to seek information from the creditor in SOR 1.a. (Tr at 27, 28); he has not yet "made any headway in paying off" the debt cited in SOR 1.b. (Tr at 28, 29); as to the \$970 owed to State A for child support (SOR 1.c.), Applicant claims he has paid it off, but he has provided no documentation in support of the claim. He stated he would seek written confirmation (Tr at 29, 30); but none has been provided to DOHA.

The evidence supports both Guideline E allegations (SOR 2.and 2.b.), which relate to falsifications of answers to

questions 34 and 36 on Applicant's August 13, 1999 SF 86. The two garnishments in question occurred in January 1998 and October 1998, respectively, a year prior to the completion of his SF 86. Applicant's explanation is that he was not aware of the 1998 dates and that the garnishments actually occurred in 2000, after he had completed the SF 86 (Tr at 37). As to the garnishment alleged in SOR 1.d., Applicant states that it is still being enforced as of the hearing date. Applicant stated he would obtain documentation from his employer that would show relevant information, including the date the garnishment began. No such documentation has been received.

Applicant explained why he does not have any of the paperwork to support any of his claims. In essence, Applicant has a serious medical condition, which affects his ability to work and for which he has been taking a variety of prescription medications. This was confirmed by a letter from Applicant's physician, dated October 23, 2003 (read into the record by Department Counsel). Applicant had three prescription medications in his system during the hearing (Tr at 32 - 37). I have carefully considered Applicant's explanations. I conclude however, that Applicant's medical condition, while it may help to explain at least part of Applicant's financial problems and falsifications, does not make him eligible to hold a security clearance. Even without his medical problems, his incurring of so much delinquent debt and his substantial failure to resolve them raises substantial questions about his financial integrity and judgment, as well as his reliability and trustworthiness. Likewise his explanations for the falsifications are not persuasive. The garnishments and lien occurred only a year before they were omitted from the SF 86. In addition, Applicant has not produced any documentation in support of his explanations.

Financial Problems - I accept Applicant's testimony that he has had no problems at his present employer in the three years he has been there (Tr at 21), but that he is having serious marital difficulties (Tr at 46). I also accept his explanations for his present inability to make any substantial payments on his delinquent debts (Tr at 40 - 44) and his intention to contact an attorney about filing for bankruptcy protection (Tr at 47 - 48). The fact remains, however, that the disqualifying conditions established by the record evidence, (DC 1 - history of not meeting financial obligations and DC 3 - inability or unwillingness to satisfy debts, has not been mitigated. The financial problems remain current (MC 1); they are not an isolated incident (MC 2); and Applicant has not yet initiated a good-faith effort to repay his overdue creditors or otherwise resolve his debts (MC 3). MC 3 applies but only in part, since Applicant's financial problems have gone on for so long that without resolution that not all of his continuing problems can be said to be caused by circumstances beyond his control.

Personal Conduct - SOR 2.a. and 2.b. - I have considered Applicant's explanations for the of incorrect answers he gave to Questions 34 and 36 of the SOR, which are all supported by the government's exhibits. Applicant's explanations are unclear and confusing. I conclude that DC 2 - deliberate omissions, concealment,

Even considering the favorable comments provided by Applicant's colleagues, his overall conduct contains too many recent examples of the exercise of poor judgment, unreliability, and untrustworthiness to permit a finding that he is currently eligible for 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 - 1.l, 1.n. Against the Applicant

Subparagraph 1.m. For the Applicant

Guideline E (Personal Conduct) Against the Applicant

Subparagraph 2.a.- 2.h. Against the Applicant

Guideline J (Criminal Conduct) Against the Applicant

Subparagraph 3.a.-3.d. 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