

DATE: January 15, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0587

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire,, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On April 17, 2001, 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 29, 2001, Applicant responded to the allegations set forth in the SOR, and elected

to have a decision made by a DOHA Administrative Judge based on the written record; i.e., without

a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to

Applicant on July 12, 2001. The FORM includes 8 exhibits, which have been marked and admitted

as Government Exhibits (GX) 1 - 8. The Applicant was instructed to submit information in response

to the FORM within 30 days of receipt of the FORM. Applicant submitted a response to the FORM

on October 12, 2001, even though the response was due by September 7, 2001. The matter was accepted by Department Counsel as timely, apparently because Applicant was working in the Middle East and encountered difficulties obtaining

necessary documents. The matter was assigned to me for resolution on October 31, 2001.

FINDINGS OF FACT

Applicant is a 45-year-old systems support engineer employed by a defense contractor that is seeking a security clearance for Applicant (level not specified in the FORM materials). In his response to the SOR, which alleges 10 delinquent debts under Guideline F (Financial Considerations), Applicant admitted SOR 1.a., i.e., and 1.f. He denied SOR 1.e, 1.g., 1.h., and 1.j. He answered "do not admit or deny" to SOR 1.b., 1.d., and 1.i. After considering the totality of the

evidence in the case file, including Applicant's response to the SOR and the FORM, I make the following FINDINGS OF FACT as to each SOR allegation:

As of June 21, 2001, the date of Applicant's response to the SOR:

1.a. - Applicant was indebted to Department Store A for a delinquent debt of approximately \$3,880.00. This debt was written off and has not been satisfied;

1.b. and 1.c. - Applicant was indebted to Company B for two delinquent debts in the amounts of \$59.00. and \$42.00. These debts were paid off by a check, dated August 15, 2001 (Response to FORM (RTF) at pp.1, 7, 8, 9, 10.);

1.d. - Applicant was indebted to Credit Card Company D for a delinquent debt in the amount of approximately \$4,504.00. This debt had been charged off and has not been satisfied;

i.e. - Applicant was indebted to Collection Agency E for a debt incurred for services provided by a towing company in the amount of approximately \$191.00. This debt has not been satisfied;

1.f. - Applicant was indebted to Department Store F for a delinquent debt in the amount of approximately \$2,287.00. This debt has not been satisfied;

1.g. - Applicant was indebted to Bank G for a delinquent debt in the amount of \$500.00. This debt has not been satisfied;

1.h. - Applicant was indebted to Company H in the amount of \$417.00. This debt has not been satisfied;

1.i. - Applicant was indebted to Pizza Store I for a delinquent debt in the amount of \$40.00. This debt has not been satisfied;

1.j. - Applicant was indebted to Company J for a delinquent debt in the amount of approximately \$3,631.00. This debt has not been satisfied.

Applicant's financial problems substantially arose during a period when his marriage deteriorated and culminated in separation and divorce. atters became worse in 1994, when he retired from the Air Force. His income dropped from

about \$36,000.00 per year to about \$18,000.00, including Air Force retirement. His income remained low for several years, while the

family debt situation became worse, in part, because of his wife's gambling and his working out of

the country for substantial periods. The couple agreed to divorce in late 1997/early 1998 (RTF at

p. 3). The divorce process became antagonistic and his wife refused to honor agreements as to mutual responsibility for paying debts. Specifically, the wife was ordered to make mortgage payments, but filed for bankruptcy instead of making payments (RTF at p. 4). Applicant continued

to send maintenance and support. Applicant's legal costs increased to the point he was unable to make substantial payments on debts (*Id.*).

The divorce became final in July 2001. Applicant's present financial situation is substantially

better than it was in previous years (RTF at p. 21). He now has enough available income to pay off

his debts in a reasonable time once the actual amounts are definitively established (RTF at p. 1). Applicant, who is working in the Middle East, has been in contact with his divorce lawyer in the US, in an effort to finalize debt issues and resolve all debts (RTF at p. 5, 6). Applicant has also been

in contact with Trans Union credit reporting service and that company has agreed to check with listed creditors and obtain correct status and amounts (RTF (September 22, 2001) at p ii - 25).

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 financial judgment and conduct.

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

GUIDELINE F (Financial Considerations)

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 maybe disqualifying include:

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

Conditions that could mitigate security concerns include:

3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergencies, or a death, divorce, or separation);
4. The person has received or is receiving counseling for the problem AND there are clear indications that the problem is being resolved or is under control;
6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

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.

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 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

The debts alleged in the SOR total slightly less than \$16,000.00. Two small debts (SOR 1.b. and i.c.) have recently been paid off. Of the remainder, the larger debts (1.a. (\$3,888.00), 1.d. (\$4,504.00), 1.f. (\$2,287.00), and 1.j. (\$3,631)), comprise \$14,810.00 or 92% of the total balance. Applicant admits SOR 1.a. and 1.f., denies SOR 1.j, and neither admits nor denies SOR 1.d. Of these four major debts, only the creditors cited in SOR 1.a. and 1.f. are specifically cited in the Bankruptcy Court's "Trustee Report and Account" (RTF at pp. 17, 20).

The case file contains indications he has been in contact with an attorney, with the bankruptcy court, and with the credit reporting service, whose report was used in preparing the SOR,

with the goal of ascertaining his responsibility for the cited debts and the status of those debts. The

problem is that except for two small accounts, the bulk of the debt load, cited in the credit report and

in the SOR remains unpaid and unresolved as of the closing of the record in this matter. Even if Applicant is eventually able to demonstrate that he is not legally responsible for the debts he believes

were incurred by his wife, he has not yet done so. As to debts included in the bankruptcy, since it was his wife who filed, without Applicant's knowledge and involvement, any discharge pertains only

to his wife, while Applicant remains liable. Consequently, all these debts remain in force as to Applicant. Conceding the difficulties of working at a long distance, it is clear that little has been accomplished over a period of at least several years. Except for SOR i.b. and i.e., the debts cited in the SOR remain unresolved.

In Applicant's June 29, 2001 response to the SOR and his October 12, 2001 response to the

FORM, the status of the process by which Applicant was to clarify his responsibility for the individual debts and the amounts, if any, still owing, remains the same. He has still not obtained the

necessary documentation that will either absolve him of the debts or provide a precise amount he can

then pay off. The problem is that, as of now, the case record establishes the existence of the debts,

but not their resolution. I have carefully considered all of Applicant's evidence showing the difficulties he has had working for the past four years in the Middle East; the relative lack of success

he has had in obtaining responses from his lawyer, his creditors, and others; and his willingness to

finally resolve all of his debts. I conclude however, that he not yet demonstrated that the debts have

been, or are being, resolved. Under these circumstances, the record does not support a conclusion favorable to

Applicant.

I have considered the evidence in light of the appropriate legal standards and factors, and have assessed Applicant's credibility based on the written record. I conclude the totality of the evidence establishes a case as to all SOR allegations, which in turn establishes a nexus or connection with Applicant's security clearance eligibility. The remaining issue is whether Applicant has provided explanation, mitigation and/or extenuation adequate to overcome the negative impact of the Government's case. As discussed above, I conclude Applicant has not yet demonstrated the financial rehabilitation, good judgment and reliability 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. For the Applicant

Subparagraph 1.c. For 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

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