

DATE: July 31, 2002

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-13740

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 29-year-old employee of a defense contractor was delinquent on 10 separate accounts.

He has paid off three, but has not made any steps toward resolving the remaining debts. In addition, Applicant omitted any mention of the debts in a June 2000 security clearance application, and also omitted any mention of his 1997 bad check arrest. Despite his efforts to date, he has not demonstrated financial rehabilitation, and has not adequately explained away the falsifications. No mitigation has been established. Clearance is denied.

STATEMENT OF THE CASE

On February 6, 2002, 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 March 15, 2002, 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 March 2, 2002. The FORM includes eight 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 timely submitted a response to the FORM, to which Department Counsel did not object. The submission included three separate documents, which have been marked and admitted as Applicant's Exhibits (AX)

1 - 3. [\(U\)](#) The matter was assigned to me for resolution on July 8, 2002.

FINDINGS OF FACT

Applicant is a 39-year-old computer engineer employed by a defense contractor that is seeking a security clearance for Applicant (level not specified in the FORM). In his response to the SOR's 12 allegations under Guideline F (Financial Considerations), which references 11 delinquent/past due debts and a "monthly remainder of approximately \$1,641.00," Applicant claims all of the debts cited in the SOR under Guideline F, are being paid off or have already been paid off. In response to the two allegations of falsification under Guideline E (Personal Conduct), referencing his answers to Questions 26 (Your Police Record - Other Offenses) and 38 (Your Financial Delinquencies - 180 days), Applicant admits the substance of the allegations and offers as excuses that he had forgot (Question 26) or "had little knowledge of what was owing because my wife took care of most of the finances" (GX 3). Applicant's response does not specifically reference Guideline J (Criminal Conduct), which I accept as a denial.

After considering the totality of the evidence in the case file, including Applicant's responses to the SOR and FORM, including attachments, I make the following FINDINGS OF FACT as to each SOR allegation:

Guideline F (Financial Considerations)

SOR 1.a. - The cited \$15,151.00 debt owed to the United States Department of Education has been paid off, as of May 23, 2002, primarily by the Government's garnishment of Applicant's wages (AX B).

SOR 1.b. - This student loan debt of \$550.00 is established by GX 3 and GX 7. In his response to the FORM, Applicant states he will pay this debt by the end of May 2002, but there is no evidence that he has done so. As a result, I find the debt to remain outstanding.

SOR 1.c. - This debt of \$360.00 to Creditor C is established by GX 3 and GX 7. In his response to the SOR, Applicant claims the debt has been satisfied, but he has not provided any documentation of the payment. As a result, I find the debt to remain outstanding.

SOR 1.d. - The existence of this debt of \$183.00 is established by GX 3 and GX 7. Applicant claims he has "satisfied" this debt (response to FORM), but has not provided any documentation to counteract the documentation supporting the existence of the debts. As a result, I find the debt to remain outstanding.

SOR 1.e. - The existence of this debt of \$264.97 is established by GX 3 and GX 7. Applicant claims he has "satisfied" this debt (response to FORM), but has not provided any documentation to counteract the documentation supporting the existence of the debts. As a result, I find the debt to remain outstanding.

SOR 1.f. - The \$12.26 debt owed to Creditor F has been paid off, as of May 6, 2002 (AX C).

SOR 1.g. - The existence of this debt of \$183.00 is established by GX 3 and GX 7. Applicant claims he has "satisfied" this debt (response to FORM), but has not provided any documentation to counteract the documentation supporting the existence of the debts. As a result, I find the debt to remain outstanding.

SOR 1.h. - The existence of this debt of \$183.00 is established by GX 3 and GX 7. Applicant claims he has "satisfied" this debt (response to FORM), but has not provided any documentation to counteract the documentation supporting the existence of the debts. As a result, I find the debt to remain outstanding.

SOR 1.i. - The existence of this debt of \$150.00 is established by GX 3 and GX 7. Applicant claims he has "satisfied" this debt (response to FORM), but has not provided any documentation to counteract the documentation supporting the existence of the debts. As a result, I find the debt to remain outstanding.

SOR 1.j. - The existence of this debt of \$103.00 is established by GX 3 and GX 7. Applicant claims he has "satisfied" this debt (response to FORM) but has not provided any documentation to counteract the documentation supporting the existence of the debts. As a result, I find the debt to remain outstanding.

SOR 1.k. - In 1997, Applicant was arrested and charged with issuing a nonsufficient funds (NSF) check for \$50.00. He was convicted of a lesser charge, ordered to make restitution of \$73.42, and \$100.00 for a fine and court costs. He paid the \$100.00 on October 21, 1997, and the case was closed.

SOR 1.l. - As of the date of issuance of the SOR, Applicant had a monthly available balance to pay the cited debts of approximate \$1,641.00. The total delinquent debt still owing is about \$1,800.00

Guideline E (Personal Conduct)

SOR 2.a. Applicant knowingly falsified his answer to Question 26 on his security clearance application (GX 4), when he stated "No," and failed to mention his 1997 arrest, as cited in SOR 1.k.

SOR 2.b. - Applicant knowingly falsified his answer to Question 38 on his security clearance application (GX 4), when he stated "No," and failed to mention all of the debts cited in paragraph 1, above.

Guideline J (Criminal Conduct)

SOR 3.a. - The conduct alleged under Paragraph 2, above, i.e., the falsifications, each constitutes a violation of 18 U.S.C. 1001.

Applicant received praise about his work from his program manager (AX A).

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.

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:

None that are applicable under the evidence of record.

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 the person may not properly safeguard classified information.

Condition that could raise a security concern and maybe disqualifying include:

2. The deliberate omission, concealment, of falsification of relevant and material facts from any personnel security questionnaire, . . . used to . . . determine security clearance eligibility.

Conditions that could mitigate security concerns include:

None that are applicable under the evidence of record.

GUIDELINE J (Criminal Conduct)

The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness.

Conditions that could raise a security concern and maybe disqualifying include:

1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;
2. A single serious crime or multiple lesser offenses

Conditions that could mitigate security concerns include:

None that are applicable under the evidence of record.

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.

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

As of the closing of the record, Applicant has documented paying off several debts, but despite his claims of satisfying other debts, has not documented his claims as to the bulk of the debts.

In addition, he has not provided adequate explanations of the falsification of his answers to Questions 26 and 38 on his security clearance application (GX 4). His sole explanation, found in his response to the SOR (GX 3), is that he had "little knowledge of what . . . was owing as [his] wife took care of most of the finances."

DOHA decisions are not an evaluation of a person's loyalty to the United States but of the risks that result from a person's conduct, if that conduct violates one or more of the Guidelines in the Directive. In the present case, the Guidelines deal with financial considerations, personal conduct and related criminal conduct. The underlying concern of all three cited guidelines is that the manner in which an individual incurs debts, how he seeks to resolve those debts, and how he reports the debts (and covered arrests) on a security clearance application may show a degree of questionable judgment, unreliability, and/or untrustworthiness that is unacceptable in someone seeking access to the nation's secrets.

This concern is central to the issues in this case. Even if much of the debt was incurred through an education loan, the fact remains that the education loan was delinquent and was only recently paid off by garnishment, rather than by Applicant's voluntary efforts. In addition, Applicant has not paid off most of the remaining delinquent debts. In that regard, while Disqualifying Conditions (DC) 1 and 2 apply, none of the Mitigating Conditions have been demonstrated to be applicable. The debts remain recent, they are not an isolated event, and it has not been demonstrated that the debts are being resolved or are under control (MC 1, 2, and 5). The same is true as to the falsifications, under both Guidelines E and J), e.g., they are not an isolated incident (two lies equals two criminal violations), they remain "recent," Applicant did not voluntarily correct the falsehoods before being confronted, and there is no clear evidence of rehabilitation.

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 that the totality of the evidence establishes a case as to all but three 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 carried his burden of demonstrating that all of the debts have been paid off. Even more than the financial situation, the falsifications go most directly to the heart of the security clearance eligibility process and establish unfavorable conduct to the degree that a doubt arises as to Applicant's judgment, reliability, and trustworthiness. Under these circumstances, the record does not support a conclusion favorable to Applicant at this time. In the year before Applicant can reapply for a security clearance, he will have the opportunity to finally resolve the delinquent debts at issue in the present matter and to mitigate the impact of the falsifications.

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. For the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. For 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. For the Applicant

Subparagraph 1.l. Against the Applicant F

Guideline E (Personal Conduct) Against the Applicant

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

Guideline J (Criminal Conduct) Against the Applicant

Subparagraph 3.a. 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

1. Applicant's cover letter states that information about two other debts can be obtained by Department Counsel directly contacting the creditors. This is not 'evidence' the Government can consider since every document submitted in response to a FORM must be in writing and obtained and submitted by the Applicant. Because of this defect, I cannot consider what the two proffered sources might have said.