

DATE: July 28, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-17379

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a judgment against him for almost \$20,000 that dates back to the mid1990s, and four other delinquent debts totaling about \$615.00. These debts have not been satisfied or otherwise resolved. He also wrote five bad checks in 1995/1996, totaling about \$440.00. Criminal charges were filed, but were dismissed after a civil compromise was reached and Applicant agreed to pay the amount owed. After the hearing, Applicant contacted an attorney about filing for bankruptcy protection, but has not yet taken any action to resolve his debts. No mitigation has been established. Clearance is denied.

STATEMENT OF THE CASE

On January 31, 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 March 4, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made after a hearing before a DOHA Administrative Judge. The case was originally assigned to another Administrative Judge, but was transferred to me on April 15, 2003, because of caseload considerations. A Notice of Hearing was issued on April 15, 2003, and the hearing was conducted on May 2, 2003. At the hearing, Department Counsel offered 13 exhibits (Government Exhibits (GX) 1 - 13). Applicant testified on his own behalf and offered two exhibits

(Applicant's Exhibits (AX) A - J). Applicant submitted two additional exhibits after the hearing (AX C and AX D). The transcript (Tr) was received at DOHA on May 19, 2003.

FINDINGS OF FACT

Applicant is a 43-year-old test technician for a defense contractor. The SOR contains five allegations under Guideline F (Financial Considerations) and one allegation under Guideline J (Criminal Conduct). In his response to the SOR, Applicant admits SOR allegations 1.a., 1.c., 1.d.,

and 2.a. These admissions are accepted and made Findings of Fact. Based on the contents of the case file, including Applicant's testimony and all exhibits, I make the additional following Findings of Fact as to each SOR allegation.

GUIDELINE F (Financial Considerations)

1.a. - As of March 4, 2003, Applicant was indebted to Collection Agency A in the approximate amount of \$19,956.00, for a judgment issued against him in November 1998. Applicant has explained how he views this debt and states that it "was my impression after a foreclosure, loans were paid" (Tr at 27 -33), but he has not documented or otherwise established that the debt never actually existed or, if it did, that it no longer exists as a valid debt.

On May 15, 2003, Applicant contacted an attorney who responded that "after evaluating case no. MC57670, the outstanding 2nd trust deed, and a number of your financial obligations, we believe that a bankruptcy may benefit you" (AX D). The case number cited above is the same that appears in the March 27, 2002 credit report referring to the October 1997 judgment for \$19,955.00 (GX 4).

I find that the debt and judgment cited in SOR 1.a. remain open and valid.

1.b. - Applicant is indebted to Medical Firm B in the approximate amount of \$215.00, for an account placed for collection. Although Applicant has repeatedly claimed that he is not aware of the debt and that it may be his daughter's medical debt, he has not taken steps to resolve this debt. His explanation about the family problems that allegedly prevented any attempt at resolution (Tr at 34) is not persuasive, particularly considering the time that has elapsed since he became aware of DoD's concerns about this debt.

1.c. - Applicant is indebted to Cable Company C in the approximate amount of \$70.00, for an account placed for collection. As of the hearing date, he had not yet resolved this debt and, apparently, had not made any significant efforts to do so.

1.d. - Applicant is indebted to Telephone Company D in the approximate amount of \$209.00, for an account placed for collection. As of the hearing date, he had not yet resolved this debt and, apparently, had not made any significant efforts to do so.

1.e. - Applicant is indebted to Hospital E in the approximate amount of \$117.00. Applicant does not recall going to this facility, but has not contacted the credit reporting agencies to challenge the debt or ask questions about it (Tr at 36).

All of the above debts have remained unresolved for as long as eight years. I have considered Applicant's work history, as shown in AX A.

Guideline J (Criminal Conduct)

2.a. - Applicant wrote a bad check in February 1995, three bad checks in December 1995 and one more bad check in January 1996, to stores that filed criminal complaints with the local District Attorney. On February 23, 1996, Applicant was charged in State A with two counts of writing bad checks, both misdemeanors. Criminal charges were dismissed after a civil compromise under which Applicant paid the debts (Tr at 37, 38).

POLICIES

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 security concerns and may be disqualifying include:

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

Condition 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, business turndown, unexpected medical emergency, or a death, divorce, or separation).

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 may be disqualifying include:

1. Any criminal conduct . . . ;
- 2.. . .multiple lesser offense

Conditions that could mitigate security concerns include:

1. The criminal behavior is not recent

"Eligibility for access to classified information is restricted to U.S. citizens whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion and sound judgment, . . . and willingness to abide by regulations governing the use, handling, and protection of classified information." (Executive Order 12968 § 3.1(b) (August 4, 1995). Eligibility is predicated upon an applicant meeting the security guidelines contained in the Directive.

I have evaluated the totality of the evidence under both the specific additional guidance found in Enclosure 3 to the Directive and the general guidelines under Section E2.2.1. of Enclosure 2 to the Directive.

CONCLUSIONS

In the early 1990s, Applicant was working for his present employer and also opened a sandwich shop with money received from an inheritance (Tr at 38, 39). The shop failed and then Applicant was laid off. The bad checks were written during this period (Tr at 40). Applicant is married and has five children (Tr at 44). Applicant has about \$17,000.00 equity in his home and a 401k plan containing about \$3,000.00 (Tr at 48). During the month prior to the hearing, Applicant and his wife discussed filing for bankruptcy (Tr at 49) and did contact an attorney after the hearing (Tr at AX D). Applicant has paid off some of the debts cited in his credit reports, but not the ones cited in the SOR (Tr at 51).

Guideline F - The Judgment for \$19,956.00 (SOR 1.a.) is by far the largest debt alleged in the SOR. The issuance of the judgment in October 1997 is found in credit reports dated May 21, 1999 (GX 5), March 27, 2002 (GX 4), and January 23, 2003 (GX 6, GX 7, and GX 8). This judgment is discussed by Applicant in his sworn statement of July 21, 1999 (GX 9), in which he states the judgment pertains to Applicant's business, which subsequently failed, after which the business site owner demanded payment of three years rent due pursuant to their rental agreement.

The other debts cited in the SOR are also clearly established by the totality of the record,

so the important question to be resolved is whether Applicant has mitigated the negative impact of his failure to resolve the debts over a period of many years. I have considered his family and employment problems and given them considerable weight in my evaluation, but the record compels the conclusion that Applicant has not made significant efforts to resolve the cited debts since being recalled by his employer regaining employment in May 2002. I note his recent inquiries into the possibility of filing for bankruptcy protection, but only after the hearing did he contact an attorney and obtain an opinion the bankruptcy was a viable option.

I am required to base my evaluation and decision on whether Applicant's conduct comes with any of the Directive's Disqualifying Conditions (DC). I conclude that he does have at least an eight-year history of not meeting his financial obligations (DC 1), and has shown an inability, if not unwillingness, to satisfy his debt (DC 3), despite having funds and assets currently available to pay off the smaller debts, and at least make payments on the largest debt cited in SOR 1.a. In addition, he has had the legal remedy of filing for bankruptcy protection available to him, but has procrastinated in doing so until just recently.

As to possible Mitigating Conditions (MC), Applicant's financial problems are still recent and are not isolated, so that MC 1 and MC 2 do not apply. Since Applicant had been laid off for six years and four months out of the ten years prior to the hearing (Tr at 18), MC 3 may apply as to how the debts were incurred but not as to their resolution, since the record indicates that resolving the cited debts have been within his ability during the past year. Applicant has not demonstrated that he is receiving credit counseling, or that his financial problems are under control, as required to qualify for MC 4, nor has he yet initiated a good-faith effort to repay his overdue creditors, as required by MC 6.

The fact that his wife generally handled the checkbook does not excuse his own responsibility for his own debts or his failure to resolve debts so long delinquent. The issuance of five bad checks in 1995/1996 indicates how long the financial irresponsibility has lasted. Applicant has certainly had not yet established financial rehabilitation.

Guideline J - the five bad checks in question were for \$190.00 in February 1995, \$51.75, 90.34, and \$103.66 in December 1995, and \$23.42 in January 1996 (GX 12). In each case, the creditor had made phone calls, and sent letters, with no response (GX 13). The matter was dismissed after Applicant and the creditors reached a civil compromise and Applicant paid the debts (GX 11).

Disqualifying Conditions 1 (any criminal conduct) and 2 (multiple lesser offenses) are applicable. As to Mitigating Conditions, MC 1 is applicable since the bad checks were not issued recently (1995 and 1996). MC 2 is not applicable since the issuance of five bad checks cannot be considered an isolated event. Under C 4, the record does not indicate that the misconduct is "not likely to recur," and there is "no clear evidence of successful rehabilitation," as required by MC 5.

Under these circumstances, the issuance of the bad checks is still of security significance.

Overall, I conclude that totality of the evidence supports all of the SOR allegations and their nexus or connection with Applicant's security clearance eligibility. The same cannot be said for Applicant's offer of evidence in mitigation. His wife's involvement in handling family debts and payments does not excuse his failure to exercise his personal financial responsibility.

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." Applicant has not demonstrated he possesses the requisite judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets. His conduct creates significant doubts about serious matters, and such doubts must be resolved against the granting of a clearance.

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

Guideline J (Criminal Conduct)

Subparagraph 1.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