

DATE: March 24, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-22566

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 38-year-old electronics technician has incurred seven delinquent debts since 1994 and has paid off only one, for \$101.00. He claims contacts with the creditors and attempts to resolve the rest, but he has not documented any substantial action, even during the investigation and adjudication period leading up to the hearing. He admits simply delaying taking any action to resolve his debts. He has not demonstrated financial rehabilitation. No mitigation has been shown. Clearance is denied.

STATEMENT OF REASONS

On July 11, 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 July 25, 2002, 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 assigned to me on October 28, 2002. A Notice of Hearing was issued on November 14, 2002, and the hearing was conducted on December 3, 2002. At the hearing, Department Counsel offered six exhibits, which were marked as Government Exhibits (GX) 1 - 6. Applicant testified on his own behalf and introduced six exhibits, which were marked as Applicant's Exhibits (AX) A - F. He also submitted four post hearing exhibits, which were marked AX G, H, I, and J. Without objection by either party, all exhibits from both parties were admitted into evidence as marked. The transcript (Tr) was received at DOHA on December 18, 2002.

FINDINGS OF FACT

Applicant is a 38-year-old Electronics Technician for a major defense contractor. His employer is seeking a Secret security clearance for Applicant in connection with her employment.

In his response to the SOR, Applicant admitted the allegation in SOR 1.a and 1.c. He denied all other SOR allegations.

Based on the contents of the case file, including all testimony and exhibits GX 1 - GX 6, and AX A - AX J, I make the following Findings of Fact as to each SOR allegation.

GUIDELINE F (Financial Considerations)

As of July 11, 2002, the date of issuance of the SOR, Applicant owed delinquent debts to eight separate creditors:

1.a. - Emergency Room A in the approximate amount of \$250.00 since February 1996, and \$195.00 since January 1999. At the hearing, Applicant introduced a statement from this creditor (AX A), dated August 26, 2002. It shows a current balance due of \$330.00, for services provided on August 14, 2002. It contains no indication of any amount that is past due. At the hearing, Applicant testified he was unable to find any documents from the creditor stating that he debt had been paid off. Applicant's post hearing exhibit, AX G, contains a statement by Applicant that he has reached an agreement with this creditor and "will pay \$240.00 x 3 months to pay in full." He has not documented his claims.

1.b. - Collection Agency B in the approximate amount of \$1,742.00, since January 2000. This debt relates to a car repossession in 1996 (GX 2). Applicant's Exhibit A, dated July 3, 2000, shows a balance due of \$2,211.92. A credit report, dated February 24, 2001, shows this debt to still exist (GX 3). Applicant claims this creditor is actually the collection agency for the creditor cited in SOR 1.e., which has a different name (Tr at 34). If Applicant is correct, this debt has been paid off, but this has not been documented.

1.c. - Insurance Company C in the approximate amount of \$264.00 since August 1997. The contents of Applicant's Exhibit E consisted of financial statements and a "cancellation memo," all of which are dated in 1997. Applicant's post-hearing exhibit AX I is from Applicant himself and claims he has contacted this creditor and been told he needed to "show proof of insurance coverage prior to October 17, 1997 in order for [the creditor] to withdraw the amount shown on [his] credit report." He apparently not been able to do so, and this matter has not yet been resolved.

1.d. - Telephone Company D in the approximate amount of \$101.00, since August 1997. Applicant has submitted related documents, including one from a debt collector, dated June 7, 1999, stating that the "account is now considered settled in full" (AX B).

1.e. - Loan Company E in the approximate amount of \$1,385.00, since August 1994. AX E contains documents related to this debt. The latest is a statement, dated July 3, 2000, showing a balance due of \$2,211.92. There is a handwritten notation "Paid \$170.00 10/1/00." Applicant's post hearing exhibit, AX I, shows the debt has been "paid-in-full." However, two credit reports, dated October 17, 2002, cite this debt as being "charged off" in 1999 (GX 5 and GX 6). Applicant has not documented the present status of this debt.

1.f. - Financial Company F in the approximate amount of \$1,705.00, since August 1995. Applicant's Exhibit C contains court documents, dated March 6, 2002, showing a claim on this debt for \$1,629.87. The most recent document, dated October 8, 2002, is from a collection agency. It states that no payment has been received from Applicant and demands immediate payment of \$1,599.87. It also promises the use of other remedies if payment is not made by October 25, 2002. Applicant's post hearing exhibit, AX I, contains a statement by Applicant that he is "already involved in a payment plan," but he has not documented his claim or the present status of this debt.

1.g. - Furniture Company G in the approximate amount of \$1,265.00. A judgment was issued against Applicant in August 1991, for his failure to pay this debt. Applicant's Exhibit D contains related documents, the most recent of which is a May 23, 2002 statement from a collection agency indicating payment by check of \$200.00 on May 24, 2002. Prior payment documents reflect some activity in 2000, after a claim made in court in 1999, but none since that time. Applicant's post hearing exhibit, AX I, [\(U\)](#) contains a statement by Applicant that he is "already involved in a payment plan," but he has not documented this claim or the present status of this debt.

1.h. - Applicant's Personal Financial Statement (PFS) of June 4, 2001 indicated that he was not financially capable of paying the debts cited above in SOR 1.a. - 1.g. In his recent PFS of December 13, 2002, (AX J), Applicant cites monthly payments of \$100.00 on a balance of \$1,500.00 (AX G, at last page). He also claims a "net remainder" of \$910.46.

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.

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, business turndown, unexpected medical emergency, or a death, divorce, or separation).
6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

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

Applicant's financial problems go back to the mid 1990s. Applicant cites his wife being "in and out of employment for quite some time" as the cause of his problems (Tr at 29). She is working now (Tr at 29, 30). He is "looking into the possibility of looking at a consumer counseling service"

Tr at 30). Applicant wants to "find a [service] and finally get out of this outstanding debt" (Tr at 31).

He claims he has more money available now to pay his debts, but he hasn't done so because "I just you know I put it off and you know" (Tr at 54).

While Applicant's recent efforts at reducing his delinquent debts are a positive step, he has not yet established the beginning of his financial rehabilitation. Based on what he has done and not done, it is likely that his belated actions are more the result of his concern with losing his clearance, rather than the change in financial outlook that would demonstrate rehabilitation. His recent PFS states a monthly remainder of more than \$900.0/0. Considering that the delinquent debt is now between \$5,000 and \$10,000, depending on whether the debts cited in 1.b. and 1.e are the same debt.

He has had the ability to make more substantial payments on his delinquent debts for some time, but has not done so to any substantial degree (Tr at 31). Overall, Applicant's actions and thought processes do not inspire confidence in his judgment, reliability, and trustworthiness.

It is a basic tenet of the security clearance adjudication process that the Government must first provide evidence establishing that a doubt exists as to an applicant's judgment, reliability, and trustworthiness. After the Government establishes a connection between an applicant's conduct and his/her current security clearance eligibility, the burden then shifts to the applicant to demonstrate rehabilitation, mitigation, and/or extenuation.

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."

In the present case, the Government has carried its initial burden of supporting all SOR allegations. I conclude there is a nexus or connection between the Applicant's debt load and his security clearance eligibility. I also conclude that Applicant has not yet demonstrated financial rehabilitation to the extent that he possesses the good judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets. In summary, I conclude the Government's evidence substantively supports all of the SOR allegations, which I also find have current security significance. The problem with Applicant's case is a lack of a sustained effort to resolve all of the cited delinquent debts. In the year that must pass before Applicant can reapply for a security clearance, he should take the opportunity to demonstrate that he has, completely or at least substantially, resolved all of the cited delinquent debts.

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. For 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

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 Exhibit G also refers to a debt to a telephone company for \$230.14. This debt does not appear to be one of those cited in the SOR. In any case, if it does, it would have no effect or impact on the decision.