

DATE: July 19, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-26152

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 32-year-old employee of a defense contractor is delinquent on 11 separate accounts, totaling more than \$7,000, and going back as far as 1996. Despite her involvement in the present process, and her now working two jobs, she has not yet resolved, or made payments on, any of the debts. No mitigation was shown. Clearance is denied.

STATEMENT OF THE CASE

On January 4, 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 February 4, 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 six exhibits, which have been marked and admitted as Government Exhibits (GX) 1 - 6. The Applicant was instructed to submit information in response to the FORM within 30 days of

receipt of the FORM. Applicant did not submit a response to the FORM. The matter was assigned to me for resolution on May 22, 2002.

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). In her response to the SOR, which alleges 11 delinquent/past due debts under Guideline F (Financial Considerations), Applicant admitted all 11 allegations, with explanations. After considering the totality of the evidence in the case file, including Applicant's response to the SOR, I make the following FINDINGS OF FACT as to each SOR allegation:

As of February 4, 2002, the date of Applicant's response to the SOR, all of the debts cited as owed by Applicant to Creditors A - K, as alleged in SOR 1.a. - 1.k, as incorporated by reference,

were in fact owed in the amounts stated. The amounts owed were: 1.a. - \$2,914.00; 1.b. - \$374.00;

1.c. - \$648.00; 1.d. - \$1,306.00; 1.e. - \$803.00; 1.f. - \$88.00; 1.g. - \$658.00; 1.h. - \$50.00; 1.i. - \$50.00; 1.j. - \$37.00. As of the same date, Applicant's monthly income was insufficient to pay on the cited delinquent debts, which exceed \$7,000.00.

Applicant has made efforts to resolve the debts but has been unable to do so, for a variety of reasons, specifically a lack of funds and/or an inability to reach an agreement with the creditors. As to SOR 1.g., Applicant is unhappy with the work done by the creditor/dentist and does not think she is obligated to pay for the work.

In addition some of the debts had been charged off and Applicant believed the creditors were no longer seeking repayment. As of her response to the SOR, dated February 4, 2002, the last word from Applicant, she had not made any repayments on the cited debts and could not make any prediction as to when she could pay them off.

As of January 2002, Applicant was working at one job, at which she received a pay increase, and then obtained a second position. Both are "full time jobs" (Response to SOR (GX 3)). She was paying off her "essential" bills and hopes to "get caught up on all [her] bills, old and new" (*Id.*).

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:

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.

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

As of the closing of the record, Applicant has not paid off, or even made any payments on, even the smallest debts cited in the SOR, despite her working two jobs and receiving a raise as of February 2002.

I note the information provided by Applicant in her October 22, 2001 statement (part of GX 3) and in her February 4, 2002 response to the SOR (also part of GX 3), reflecting no change in debt status. In not responding to the FORM, Applicant has lost an opportunity to document any improvements in the status of her delinquent debts since February 2002. As a result, despite the passage of many months since the security clearance eligibility process began, the record does not show any resolution of the cited debts, even as to the ones with the smallest amounts owing, all less than \$100.00 (SOR 1.f., 1.h., 1.i., and 1.j.). The debts total slightly more than \$7,000.00.

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, that Guideline deals with financial considerations. The underlying concern of the guideline is that the manner in which an individual incurs debts or how he or she seeks to resolve those debts may show questionable judgment, unreliability, and/or untrustworthiness

This concern that is central to the issues in the present case. Even if much of the debt was incurred while she was in, or just after she graduated, from college, the fact remains that Applicant has not paid off any of the cited 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 there is no clear indication the debts are being resolved or are under control (MC 1, 2, and 5). In addition while MC 3 might have been applicable in the past, the improvements in Applicant's financial situation make it no longer a mitigating factor.

The fact of the debts cited in the SOR is not disputed, nor is how the debts were incurred. What is most critical in determining Applicant's security clearance eligibility is the present size of the debt load and what she has done to resolve the individual and collective debts. I have carefully considered all of Applicant's explanation for not yet resolving each debt, including her stated intention of eventually resolving the cited debts.

The fact that a debt has been written off by the creditor (SOR 1.a.) and is no longer being pursued by the creditor, is not necessarily a positive factor for an individual who let the debt remain unpaid long enough to reach that point, and it clearly does not demonstrate financial 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 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 carried her burden of **demonstrating** she is financially rehabilitated, and possesses the good judgment and reliability required of anyone seeking access to the nation's secrets. 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, she will have the opportunity to finally resolve the delinquent debts at issue in the present matter.

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

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

Subparagraph 1.k. 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