

DATE: February 20, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-04340

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Rita Hamidi, Esquire

SYNOPSIS

This 60-year-old engineer and his wife incurred significant debt through the mid-1990s, but Applicant was not aware of many of them that were incurred by his wife, who is now deceased. He became aware of the scale of the delinquent debts only when a DSS agent showed him a copy of his credit report. Applicant has subsequently contacted most of the creditors and has paid off the bulk of the delinquent debt. He is willing and able to pay off the remaining amounts as soon as the amounts due are resolved. He did not mention three 90-day delinquent debts on his security clearance application because he was not aware of them when he completed the application. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On May 1, 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.

In a response to the allegations set forth in the SOR, dated May 19, 2003, Applicant elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was assigned to another Administrative Judge on May 29, 2003, but was reassigned to me on August 19, 2003, because of caseload considerations. On September 25, 2003, a Notice of Hearing was issued, setting the hearing for November 5, 2003. At the hearing, the Government did not present any witnesses but offered 11 exhibits, Government Exhibits (GX) 1 - 11. Applicant testified and offered five exhibits,

which were marked as Applicant's Exhibits (AX) A - F. All exhibits were admitted into evidence. The transcript (Tr) was received at DOHA on November 14, 2003.

FINDINGS OF FACT

The SOR contains 10 allegations, 1.a. - 1.j. under Guideline F (Financial Considerations) and one allegation, 2.a., under Guideline J (Criminal Conduct). In his response to the SOR, Applicant denied allegations 1.a. - 1.h. and admitted 1.i. and 1.j. He also denied allegation 2.a. His admissions are incorporated herein as findings of fact.

After considering the totality of the evidence derived from the hearing testimony and all evidence of record, I make the following FINDINGS OF FACT as to each SOR allegation:

Guideline F (Financial Considerations)

As of February 3, 2003, Applicant was indebted to the following creditors in the approximate amounts shown:

1.a. - Credit Card Company A - \$6,530; The creditor offered a settlement amount of \$1,626.35, which has been accepted and paid by Applicant (AX D and AX G1).

1.b. - Credit Card Company B - \$1,332; This debt does not appear on the credit report introduced by Applicant at the hearing (AX F, dated November 3, 2003). Applicant contacted the company and is awaiting confirmation of the nature and amount of the debt (Tr at 54).

1.c. - Department Store C - \$827; This debt was paid off on November 11, 2003. (AX C, AX G2, and Tr at 55 - 57).

1.d. - Department Store D - \$5,953; This debt was paid off on November 18, 2003 (AX G1, AX G2, and Tr at 57, 58).

1.e. - Credit Card Company E - \$3,000; This debt was paid in full to the creditor's collection agency on November 17, 2003 (AX G1).

1.f. - Department Store F - \$5,114; This debt was settled for \$4,500 and was paid off on November 18, 2003 (AX G3).

1.g. - Phone Company G - \$146; This debt and the one in SOR 1.h. are to the same company and have been paid off (AX G1).

1.h. - Phone Company H - \$216; *See* 1.g., above.

Although Applicant initially disputed many of the debts, he has accepted responsibility to pay them once the amount owed is resolved, because he came to understand State A law. (Tr at 45 - 47, 66). Several of the above cited debts were paid off through a funding company, and Applicant is seeking confirmation that the accounts had actually been paid off and closed. (Tr at 42 - 44).

1.i. - State A Tax Authority - \$2,445.81. As a result of this debt, Applicant's wages were garnished. The amount due was recovered by November 2002 (AX G1, AX G4, and Tr at 61 - 64).

1.j. - Applicant's Personal Financial statement (PFS), dated October 30, 2001, indicated that Applicant was financially able to make payment on the above debts, because it showed a monthly net remainder of \$1,380 after expenses. Applicant continues to have funds available to pay the cited debts and has been resolving each debt as a settlement amount is reached. (Tr at 91, 92).

Guideline E (Personal Conduct)

2.a. - Applicant did not intentionally falsify material facts on his July 10, 2000 Questionnaire for National Security Positions (SF 86) when he answered "No" to Question **39 - Your Financial Delinquencies - 90 days**. He did not intentionally omit the debts cited in SOR 1.b., 1.d., and 1.e., above, because he was not aware of them when he completed the SF 86 on July 10, 2001.

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.

Condition that could raise a security concern and may be disqualifying:

1. a history of not meeting financial obligations.

Conditions that mitigate security concerns include:

6. the individual initiated a good-faith effort to repay overdue creditor or otherwise resolve debts.

Guideline E (Personal Conduct)

The Concern: Conduct involving questionable judgment, unreliability, or unwillingness to comply with rules and regulations could indicate the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying:

None established by the 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. 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 proves 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.

CONCLUSIONS

Financial Considerations - The nine delinquent debts alleged in SOR 1.a - 1.I total more than \$25,500. The information cited in the first nine allegations is found in one or more of the Government's exhibits. (GX 3, 4, 5, 6, 7, 8, 9, 10, and 11). In his May 19, 2003 response to the SOR, Applicant basic response for his denials was that his "responsibility/payment terms if [I am] responsible have not been determined for this debt. As I originally stated, I was not the one that used this account. When my wife passed away, I failed to destroy her copy of credit cards." He added that his first knowledge of their use after her death was when the Defense Security Service (DSS) Agent showed him the credit report citing the debts.

In his response to the SOR, Applicant claims that he thereafter contacted the cited creditors and that he "never had an account" with the creditors named in SOR 1.a., 1.b., that he had an account with the Creditors cited in SOR 1.c., 1.d., 1.f., 1.g., and 1.h., but they had been paid in full. He does not remember having an account with the Creditor cited in SOR 1.e., that the debt has been purchased by another company, and that he has been unable to identify the original creditor. Applicant admits the tax debt alleged in SOR 1.i. He claims he made a payment on the debt, but a week later, his wages were garnished until the full amount had been paid. As to SOR 1.j., he indicates an ability and willingness to pay the cited debts once the amount owed is determined.

Applicant has apparently never before had a problem relating to the security clearance he first received in 1994. (Tr at 31). He has received cash awards for his contributions to his employer. (Tr at 32, 33). He had not looked at a credit report before being shown one by the DSS agent. (Tr at 34, 35), because he always believed he had good credit. (Tr at 38). He tried to contact the creditors shown on the credit report on his own, but was unsuccessful. He then turned to management company and then an attorney to assist him. (Id.). He has now contacted all the cited creditors and has paid off the creditors named in SOR 1.f. (Tr at 39). He testified that he used a Funding Company (Tr at 38, line 22) to make payments in 1997 to several creditors (including one bank not named in the SOR). The debts to the Creditors named in SOR 1.c., 1.d., and another, uncited, bank, were supposed to have been paid off and he is now trying to find out what happened to the money. (Tr at 40). He did not know why he owes a debt to the Credit Card Company named in SOR 1.a., [\(1\)](#)

Applicant states that he is in the process of resolving the other cited debts. (Tr at 41). Using the most recent credit report, dated November 3, 2003 (AX F), which compiles information from all three major reporting services, the status of the debts in question is as follows:

1a. - Credit Card Company A - \$6,230 or \$6,530; The creditor offered a settlement amount of \$1,626.35, which has been accepted and paid by Applicant through a risk management company (AX D and AX G1). Counsel for Applicant has stated in writing that he contacted a law firm acting on behalf of Applicant and is ascertaining what happened to the payment. A response is being awaited, and was expected by January 2004. (AX G1).

1.b. - Credit Card Company B - \$1,332; This debt does not appear on the credit report introduced by Applicant at the hearing (AX F, dated November 3, 2003). Applicant contacted the company and is awaiting confirmation of the nature and amount of the debt. (Tr at 54).

1.c. - Department Store C - \$827; This debt was paid off on November 11, 2003 (AX C, AX G2, and Tr at 55 - 57).

1.d. - Department Store D - There was a high balance of \$5,963 in an individual account opened in 1976. It was charged off or transferred for collection. However, this debt was paid off on November 18, 2003 (AX G1, AX G2, and Tr at 57, 58).

1.e. - Credit Card Company E - \$Creditor E - Unpaid balance of \$3,000 or \$3,011, in a joint account (opened in 1989) that was charged off or transferred for collection. This debt was paid in full to the creditor's collection agency on November 17, 2003 (AX G1).

1.f. - Department Store F - This debt of \$5,114 or \$5,246.30 is not found on the most recent credit report, AX F, which is dated November 3, 2003. Applicant's Exhibit D show a resolution offer payment of \$1,626.35 to a collection agency

that purchased the debt from this creditor, dated July 2, 2003, and a copy of a check from Applicant to the collection agency, dated July 22, 2003, for the settlement amount. I find that this debt was settled for \$4,500 and was paid off on November 18, 2003 (AX G3).

1.g. - 1.h. Phone Company G - These debts of \$146 and \$216 were owed to the same company and have been paid off (AX G1).

1.i. and 1.j. - The amount due for taxes owed has been recovered and Applicant now has significant available sums to pay all debts. His work record is a highly positive one and no problems from the period when he was overextended have been shown.

Financial Considerations - Disqualifying Condition (DC) 1 applies, but his ongoing and successful efforts to pay off his delinquent debts has resulted in Applicant's no longer being financially overextended, so Mitigating Condition (MC) 6 is also applicable and shows that Applicant is now in control of his finances and is unlikely to repeat his past financial shortcomings. I have carefully considered the facts and circumstances of the incurring and resolution of Applicant's debts. He certainly could have moved more quickly to resolve the debts in question. However, my evaluation of Applicant, both as an individual and an engineer, is that he is a deliberate man, who wants to get the facts before he decides what to do. While this may slow the resolution process, it also suggests that Applicant will follow the process of resolving all of his delinquent debts through to a successful conclusion.

Personal Conduct - Since the cited omissions from his SF 86 were the result of a lack of knowledge of the cited debts rather than an intent to deceive, the omissions were not deliberate, so no Disqualifying Conditions are applicable.

Overall, I conclude that Applicant has shown himself to be a man of integrity and one who takes his obligations seriously. Considering the evidence as a whole, I conclude that the evidence does not show that any risk exists that Applicant would ever act against U.S. security interests. I also conclude that Applicant has the good judgment, reliability, and trustworthiness 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) For the Applicant

Subparagraph 1.a.-1.i. For the Applicant

Guideline E (Personal Conduct) For the Applicant

Subparagraph 1.a. For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

BARRY M. SAX

ADMINISTRATIVE JUDGE

1. That bank has been merged into another bank and lost its name, a fact that is readily discoverable.