

DATE: June 24, 2004

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-07189

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 33-year-old computer technician incurred five delinquent debts when his wife became pregnant and had to stop working for an extended period. He considered filing for bankruptcy several years ago, but did not do so because he thought his wife would be able to return to work and they could pay off the debts. Her return to work has been delayed and Applicant became aware that his debts had caused security concerns. This led him to file for bankruptcy protection and a Discharge of his debts was issued in January 2004. Applicant is now current with his monthly operating expenses and has no delinquent debts. Financial rehabilitation has been established. Mitigation has ben shown. Clearance is granted.

STATEMENT OF THE CASE

On July 24, 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 December 3, 2003, Applicant submitted a response to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the written record, i.e., without a hearing. Department Counsel issued a File of Relevant Material (FORM) on January 24, 2004, and Applicant received it on February 18, 2003. The Form instructed Applicant that any response to the FORM had to be submitted within 30 days of its receipt by Applicant. The response was due on March 21, 2003. Applicant did not submit any response to the FORM. The matter

was assigned to me for resolution on arch 25, 2003. Upon examination of the file, I noticed a letter from an attorney, dated in 2003, stating that Applicant was going to file for bankruptcy protection and a copy of a Discharge of Debtor Order dated January 28, 2004. However there was nothing in the case file indicating that a Discharge in Bankruptcy had been granted. It was decided to allow Applicant additional time to obtain and submit documents showing the details in question. Appellant hereafter timely submitted a copy of the Discharge of Debtors by the U.S. Bankruptcy Court, dated January 28, 2004 (Appellant's Exhibit A).

FINDINGS OF FACT

Applicant is a 33-year-old computer technician for a defense contractor. The SOR contains five allegations, 1.a. - 1.e., under Guideline F (Financial Considerations). In his response to the SOR, Applicant *admits* all five of the SOR allegations, with the comment that "all the above issues have been resolved through the bankruptcy process" Government Exhibit (GX) 3. All of Applicant's admissions are incorporated into this decision as FINDINGS OF FACT. After considering the totality of the evidence derived from the FORM, including but not limited to Applicant's response to the SOR, I make the following additional FINDINGS OF FACT as to each SOR allegation:

Guideline F (Financial Considerations)

1.a. - Applicant was indebted to Hospital A in the approximate amount of \$140.00, which was turned over for collection in December 2002.

1.b. - Applicant was indebted to Bank B in the approximate amount of \$2,953.00 for a delinquent debt that was charged off as a bad debt in December 2000.

1.c. - Applicant was indebted to Hospital C in the approximate amount of \$168.00 for a delinquent account that was turned over for collection in June 2001.

1.d. - Applicant was indebted to Company D in the approximate amount of \$5,583.00 for a delinquent account that was charged off in September 2000.

1.e. - Applicant was indebted to Auto Dealer E in the approximate amount of \$4,659.00 for a delinquent account that was charged off in July 2000.

In January 2004, all of the above debts were discharged in bankruptcy (AX A and Response to SOR). The credit report in the case file, dated 12/17/2001 (GX 7) is the source of the five delinquent debts cited in the SOR. No other delinquent debts are shown in the credit report and Applicant is able to handle his current finances without apparent problems. The Personal Financial Statement (PFS) of November 14, 2001, attached to Applicant's Sworn Statement of November 28, 2002 (GX 5) indicates that Applicant is financially capable of paying his current expenses.

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.

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

This 33 year old Applicant's financial problems substantially appeared in the late 1990s/early 2000s when his wife became pregnant, had twins, and was forced to quit her job. Medical bills and an auto accident added financial stress. The couple were no longer able to keep current on their debts. Applicant acknowledged the problem by voluntarily returning their truck. Applicant and his wife considered filing for bankruptcy protection several years ago, but decided not do so in the expectation that his wife would be able to return to work and they could pay off their debts. This has not occurred, so they decided recently to go ahead with the bankruptcy, so they could make a fresh start. Applicant has not incurred any debts in addition to those cited in the SOR.

Bases in the entire record, I have evaluated the evidence in the context of the relevant Disqualifying (DC) and Mitigating (MC) Conditions for Financial Considerations. DC 1 (a history of not meeting financial obligations) and DC 3 (inability or unwillingness to satisfy debts) are applicable. MC 1 and MC 2 are not applicable in that the delinquent debts are still recent and cannot be considered an isolated incident. However, I also conclude that the MC 3 - conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of wife's employment, and unexpected medical emergency and expenses) is applicable, as is MC 6 -the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts.

There is no evidence of extravagant spending or a lifestyle beyond their means. Although they have shown an ability to handle current operating expenses, it is clearly beyond their ability to repay the delinquent debts. Under these circumstances, I conclude that filing for bankruptcy protection under Chapter 7 was a responsible means of resolving those debts. Bankruptcy is a valid, legal, and recognized method of ending legal responsibility for discharged debts and is of security significance only if done in a way that indicates advance planning, excessive use/multiple filings, or other conduct that suggests questionable judgment, unreliability, and/or untrustworthiness. None of that is suggested by the evidence of record.

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 Consideration) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. 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