

DATE: November 10, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29512

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 49-year-old security policeman obtained Chapter 7 discharges in bankruptcy in 1985 and 1995, totaling almost \$32,000. He currently has a delinquent debt load of more than \$10,000 that he has failed to resolve for three years or more, despite adequate income. His explanations for not accepting personal responsibility do not constitute a valid excuse. His failure to demonstrate the taking of corrective action refutes any suggestion of financial rehabilitation. No mitigation has been shown. Clearance is denied.

STATEMENT OF THE CASE

On December 18, 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 January 3, 2003, Applicant responded 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 April 8, 2003. The Form instructed Applicant that any response to the FORM had to be submitted within 30 days of its receipt by Applicant. The Applicant's response was due by June 2, 3003, but no response was received by DOHA. The matter was assigned to me for resolution on June 9, 2003.

FINDINGS OF FACT

Applicant is a 49-year-old security police officer for a defense contractor providing services outside the continental United States. The contractor is seeking a security clearance for Applicant in connection with his employment. The SOR contains nine allegations under Guideline F (Financial Considerations), 1.a. - 1.i., pertaining to individual debts, and 1.f., alleging insufficient current earnings to pay his mortgage and the other debts cited in the SOR. In his response to the SOR, Applicant *admitted* allegations 1.a., 1.b., 1.c., 1.d., 1.g., 1.h., and 1.i. He *denied* 1.e. and 1.f., on the basis that he was not aware of these debts. (Government Exhibits (GX) 3). The admitted allegations are deemed to be Findings of Fact.

After considering the totality of the evidence derived from the FORM and its attachments, including but not limited to Applicant's response to the SOR, I make the following specific FINDINGS OF FACT as to each SOR allegation:

Guideline F (Financial Considerations)

As alleged in the SOR, Applicant:

1.a. - Filed for Chapter 7 bankruptcy protection in 1985, as a result of which \$9,250 in debts were discharged;

1.b. - Filed for Chapter 7 bankruptcy protection in 1995, as a result of which \$22,612 in debts were discharged;

Applicant has the following debts that are delinquent, charged off or referred for collection:

1.c. - Bank A for \$891;

1.d. - Bank B for \$629;

1.e. - Dentist C for \$774;

1.f. - Finance Company D for \$4,500;

1.g. - Collection Agency E for \$805;

1.h. - Creditor F for \$2,741.

The two bankruptcies discharged almost \$32,000; the six debts, totaling more than \$10,300, became delinquent as long ago as 1999 and remain unsatisfied.

1.i. - Applicant's monthly income is sufficient to pay his mortgage and the above cited debts, but he has failed to show he has made such payments.

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. Because Applicant chose to have this matter decided without a hearing and without submitting any additional information in response to the FORM, all credibility determinations and findings of fact are necessarily based entirely on the contents of the FORM and applicant's response.

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to this case:

GUIDELINE F (Financial Considerations)

Conditions that could raise a security concern 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:

None that are supported 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. 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, here based solely on the written record.

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 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.

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

Since 1986, Applicant has worked, on and off, overseas. He married in 1992 and, when he was overseas, he expected his wife to handle the family's finances. He knew as early as 1999 that financial problems were occurring, and he made promises of prompt action (GX 6). Applicant admitted the accuracy of allegations 1.a. - 1.d. and 1.h. - 1.i. with the explanation that he "directed" his wife to pay these bills, and didn't follow up to make sure they were being paid. The bills were sent to his home location in State X, while Applicant was working for a contractor on a distant Pacific island. He claims he was not aware the cited bills had not been paid. As to 1.e., he is not sure about the debt, but admits it may be a dental bill for services he had received. As to the debt alleged in 1.f., Applicant claims it was for a car loan, but he and his wife voluntarily returned it because of high car payments and its being damaged after being stolen. Applicant does "not recall [the debt in 1.g.] at all" (GX 3). Applicant also claims his monthly income, as of August 15, 2003, "is sufficient to make monthly home payments and to pay [his] delinquent payments." (*Id.*).

Applicant did not respond to the FORM, which means the most recent evidence of record is what appears in Applicant's January 15, 2003 response to the SOR. He explains that "I WILL, actually I HAVE followed through on this. I will make absolutely certain that this situation is corrected" (*Id.*). Applicant does not state that he had begun making payments and did not present any documentation showing any movement toward paying off or otherwise resolving his large debt load. While I do not question his statement that he had spoken with his wife and intended to do something about the debts, there is absolutely no evidence that he has actually done so. Since the response to the FORM was due on June 3, 2003, almost six months after his response to the SOR,

he had the opportunity during that time to make inroads into the debts which, he says, he has the income to do. His failure to act in his own self interest remains unexplained.

Applicant's past promises and continuing failure to follow up on those promises raises serious doubts about his judgment, reliability, and trustworthiness. The record support all of the SOR allegations, and establishes the applicability of Disqualifying Conditions (DC) 1 (history of not meeting financial obligations) and DC 3 (Inability or unwillingness to satisfy debts). The record does not establish the applicability of any of the possible mitigation conditions (MC), e.g., MC 1 (the behavior remains recent), MC 2 (the behavior is not an isolated incident); MC 3 paying off or otherwise resolving the debts has been within Applicant's control for some time); MC 4 (there is no evidence that the financial problem is being resolved or is under control).

Bankruptcy protection is a legal right in the United States and does not automatically have negative security connotations. However, considering Applicant's Chapter 7 discharges in 1985 (\$9,250) and 1995 (\$22, 612), along with his ability to make payments on the current delinquent debts of \$10,300, shows a long and repeated pattern of financial irresponsibility that is personal to Applicant and cannot be excused by citing his wife's shortcoming along with his own. Absent a showing of actual financial rehabilitation, Applicant has done nothing to demonstrate that the Government's concerns have been mitigated or that he currently possesses the good judgment, reliability, and trustworthiness required of anyone seeking a security 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

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

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