

DATE: March 16, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-32182

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Jr., Esquire

FOR APPLICANT

Pro Se

SYNOPSIS

This 50-year-old engineering scientist has worked in aerospace since at least 1992. From 1995 to at least 2001, he either tried to evade his Federal and/or state income taxes, or simply did not file required returns. He also has delinquent debts relating to college tuition and county property taxes. Total delinquency is about \$32,000. He omitted any mention of two large liens from his security clearance application. Applicant is an admitted procrastinator. His tax delinquencies also constitute violation of Federal and State criminal law. No mitigation has been shown as to any allegation. Clearance is denied.

STATEMENT OF THE CASE

On September 11, 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 October 9, 2003, Applicant responded to the allegations set forth in the SOR. By a second response, dated November 25, 2003, Applicant 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 6, 2004. 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 February 18, 2004, but Applicant did not submit any such response. The matter was

assigned to me for resolution on March 3, 2004.

FINDINGS OF FACT

Applicant is a 50 -year-old engineer scientist for a defense contractor. The September 11, 2003 SOR contains five allegations under Guideline F (Financial Considerations), 1.a. - 1.e., all pertaining to delinquent tax and college tuition debts; one allegation, 2.a., under Guideline E (Personal Conduct- Falsifications); and three allegations, 3.a. - 3.c., under Guideline J (Criminal Conduct). In his October 9, 2003 response to the SOR, Applicant *admitted* all nine allegations made under the three guidelines. All of the admitted allegations are incorporated herein as Findings of Fact.

I find that the Government's allegations are both derived from and supported by the Government's 19 exhibits, Items 1 - 19. In the absence of a response to the FORM, the last evidence in the case file is found in Applicant's response to the SOR. After considering the totality of the evidence derived from the FORM and its attachments, I make the following specific FINDINGS OF FACT as to the status of each SOR allegation:

Guideline F (Financial Considerations)

- 1.a. - A Federal tax lien filed against Applicant in August 2000, for approximately \$14,037, for Tax Years (TY) 1995 - 1998 remains unpaid.
- 1.b. - A State A tax lien was filed against Applicant on February 1, 2002, for approximately \$14,615, for TYs 1997 and 1998 remains unpaid.
- 1.c. - Applicant deliberately and knowingly did not file any Federal or State A income tax returns for TYs 1999, 2000, and 2001.
- 1.d. - Applicant remains indebted to University B in the approximate amount of \$2,900, for unpaid tuition for classes he took in 1999.
- 1.e. - Applicant remains indebted to County C in State A in the approximate amount of \$650 for property taxes due for TY 1991.

Guideline E (Personal Conduct)

- 2.a. - Applicant falsified material facts on his security clearance application (SF 86) of May 17, 2002, when he responded to Question **36 Your Financial Record - Tax Lien** [in last seven years], by saying Yes, and disclosed a State A tax lien for \$9,000 filed in July 2000, but did not cite either of the liens cited above in SOR 1.a and 1.b.

Guideline J (Criminal Conduct)

- 3.a - The information cited in SOR 1. and 1.c., above, shows that Applicant attempted to evade or defeat Federal income taxes, in violation of 26 U.S.C. 7210, a felony.
- 3.b. - The information cited in SOR 1.c., above, also shows that Applicant willfully failed to file Federal income tax returns for TY 1999, 2000, and 2001, in violation of 26 U.S.C. 7201, a misdemeanor.
- 3.c. - The information cited in SOR 1.b. and 1.c., above, shows that Applicant attempted to evade or defeat State A income taxes, as required by specific state law, a felony.

Applicant's admissions in his response to the SOR as to each allegation are accompanied by a brief discussion and a promise of future action to resolve the debts cited referenced in SOR 1.a.- 1.e. and 2.a. However, Applicant did not take advantage of his opportunity to obtain such documentation and submit it as part of a response to the FORM. While a promise of future action can be considered evidence, under the present circumstances, the weight to be given it is minimal.

Likewise, his earlier explanations (Sworn Statement of June 7, 2002, Item 7), even if true, do not constitute a valid

defense or excuse of this conduct, and, in any case, have not been supported by any subsequent action. I find that all of the debts remain delinquent and owing as alleged in SOR.1.a. - 1.e., and 2.a.

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:

3. The conditions that resulted in the behavior were largely beyond his control.
4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control.
6. The individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

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 this matter is being decided without a hearing, my evaluation is necessarily limited to the contents of the various documents that are found in the case file. Applicant understands the Government's concerns with his past debt problems and stated an intent to resolve the cited debts. However, he has not done so, despite the passage of several years since he was first placed on notice of the Government's concerns. As to his delinquent taxes, his explanations include the following .

* I'm an extreme procrastinator when it comes to filing my taxes. I am resentful of the complicated nature of the tax code and think it should be simpler.

* I knew I would owe the Federal government some money.

* I did not file the [cited] returns because it is easier not to file than getting the required documents done.

* I plan to have all of my tax returns filed by July 2002 [but has not shown he did so].

* I do consider the way I handle some of my financial matters to be immature, however I will make every effort to do

[better. However he has not done so].

The totality of the record shows Applicant to be an intelligent man with serious character flaws that have prevented him acting financially responsible, despite having the resources to keep current with his debts and being put on notice of DoD's concerns more than two years ago. The same flaws have led him to falsify his SF 86 and to commit a continuing series of tax-related criminal conduct since 1995, with no proof that he has ceased his unacceptable conduct. He simply has not shown himself to a man of integrity.

Disqualifying (DC) and Mitigating Conditions (MC)

Financial Considerations - DC 1 (a history of not meeting financial obligations) and DC 3

(Inability or unwillingness to satisfy debts) are clearly applicable, but none of the mitigating conditions are supported by the record.

Personal Conduct - DC 2 (deliberate omission, concealment, or falsification of relevant and material facts [from his SF 86] is clearly applicable, but none of the possible mitigating conditions are supported b the record.

Criminal Conduct - DC 1 (any criminal conduct, regardless of whether the person was formally charged and DC 2 (a single serious crime or multiple lesser offenses) are applicable, but none of the possible mitigating conditions have been shown by the record.

In conclusion, I conclude that Applicant has not documented the resolution of any of his financial problems and has not adequately explained the falsification on his SF 86 history and pattern of criminal conduct. Applicant has nor shown any financial rehabilitation and has not carried his burden of establishing that he 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) 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

Guideline E (Personal Conduct) Against the Applicant.

Subparagraph 2.a. Against the Applicant

Guideline J (Criminal Conduct) Against the Applicant

Subparagraph 3.a. Against the Applicant

Subparagraph 3.b Against the Applicant

Subparagraph 3.c. 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