

DATE: August 4, 2004

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In Re:

SSN:

Applicant for Security Clearance

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ISCR Case No. 02-13549

**DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

**APPEARANCES**

**FOR GOVERNMENT**

Nygina T. Mills, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

This 71-year-old employee of a defense contractor has two long-delinquent debts exceeding \$20,000. He deliberately omitted any mention of the debts from his 2001 security clearance application. The recommendations submitted by his colleagues are helpful but do not mitigate his financial problems nor his falsification. Mitigation has not been adequately established. Clearance is denied.

**STATEMENT OF THE CASE**

On September 16, 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 13, 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 January 30, 2004. The Form instructed Applicant that any response to the FORM had to be submitted within 30 days of its receipt by Applicant. Any response was due by January 3, 2004, but no submission to the FORM was received as of that date. The matter was assigned to me for resolution on March 22, 2004.

**FINDINGS OF FACT**

Applicant is a 71-year-old employee of a defense contractor who is seeking a security clearance for Applicant in connection with his employment. The SOR contains two allegations under Guideline F (Financial Considerations) and

one allegation under Guideline E (Personal Conduct). In his response to the SOR, Applicant *admits* the two Guideline F allegations, SOR 1.a. - 1.b. and denies the knowledge/intent aspect of Guideline E allegation 2.a. The admitted allegations are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence derived from the FORM and its attachments, including Applicant's responses to the SOR, I make the following additional FINDINGS OF FACT as to the status, past and present, of each SOR allegation:

#### Guideline F (Financial Considerations)

##### Applicant:

1.a. - was indebted to Credit Card Company A in the approximate amount of \$8,370.00 for a delinquent debt charged off in 2000. As of the present, this debt had not been resolved.

1.b. - was indebted to Bank B in the approximate amount of \$11,913.00 for a delinquent account charged off in November 2000. As of the present, this debt had not been resolved.

#### Guideline E (Personal Conduct)

2.a. - Applicant knowingly falsified material facts on his security clearance application (SF 96) of July 19, 2001, as to Question **38. Your Financial Delinquencies - 180 days**, in the last seven years, have you over 180 days delinquent when he answered "No" and deliberately failed to cite the delinquent debts cited in SOR 1.a. and 1.b., above

### 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.

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, the latest of which is Applicant's response to the SOR. Applicant is a man of 71, born in 1933. He first received a DoD Secret-level security clearance in 1995, at age 62 (Item 4 at Item 31). The Government's concerns about Applicant fall into two areas: (1) financial problems and (2) personal misconduct, specifically falsifications on his July 19, 2001 SF 86.

*Guideline F* (Financial Considerations) - The concerns expressed in the Directive's guidelines for financial problems are twofold: (1) that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds and (2) an individual's conduct in incurring debts and/or resolving or not resolving debts may demonstrate questionable judgment, unreliability and untrustworthiness. In my evaluation of the evidence, I must apply the Findings of Fact to the specific guidelines. I conclude that the following disqualifying guidelines (DC) are applicable: (1) a history of not meeting financial obligations; and (3) inability or unwillingness to satisfy debts.

I have also considered possible mitigating conditions (MC) under Guideline F, and conclude that none of the mitigating conditions have been shown by Applicant to be applicable *and* to outweigh the disqualifying conditions. The financial

problems remain "recent" (MC 1); are not "an isolated incident" (MC 2) and there has been no "good faith effort to repay overdue creditors or otherwise resolve debts" (MC 6). MC 3 (the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, etc.) appears to be applicable as to the incurring of some of the debts, but not as to Applicant's failure to resolve the debts during the subsequent years.

The two delinquent debts exceed \$20,000. The fact that both debts were "charged off" in 2000 may mean that the creditors had given up on trying to obtain payment from Applicant, but it does not mean that Applicant has demonstrated good judgment, reliability, and trustworthiness. In Applicant's own words, his massive debts began in 1989, w-----hen his wife passed away and it became even more of a problem after he retired in 1995 (Item 5). Applicant's explanation is basically an explanation that his limited income has made it very difficult to pay off the debts. He did obtain some financial assistance from family members. However, there are legal alternatives that he could have used to resolve the massive debts he incurred. His sworn statement to the Defense Security Service (DSS) was made in December 2001, and there is no evidence of any improvement since that time. Consequently, the record compels the conclusion that Applicant has not demonstrated financial rehabilitation.

In his 2001 sworn statement to (DSS, Applicant stated that he was unable to pay these delinquent debts and that he had no intention of doing so (Item 5). In his October 13, 2003 response to the SOR, Applicant again admitted the debts, but claimed that the debt alleged in SOR 1.a. had been "charged off" (Item 2). His only other comment related to his finances is that he "lost his wife in 1989 and [is ] now on a fixed income" (*Id.*).

*Guideline E (Personal Conduct)* As to the falsification about his debt, his response is that "I made a mistake and DSS corrected it" (*Id.*). In his interview with DSS (Item 5), he states that he "inadvertently omitted any adverse financial details" and had no intent to falsify or conceal this information. At the same time, he describes the increasing financial difficulties he faced that resulted in the debts cited in the SOR, which had risen to \$11,900 to one creditor and \$8,300 to a second. This exhibit clarifies that his stated intention not to satisfy these debts is based on his inability to do so, and that he has had no choice but to let the first debt be written. He does express an intent to pay the debts if and when he becomes financially able (Item 5 at 3 of 4 and Item 6).

The evidence of Applicant's omission of the delinquent debts from his July 2001 SF 86 at Question 38 is clear and admitted by him. In 2001, the debts had been delinquent for many years and Applicant knew this to be the case. His statement that the omission was "inadvertent" because he "did not answer and review the questions on my security questionnaire in a more thorough and complete manner" is not further explained in more recent documents. I am not permitted to speculate as to what Applicant meant.

Under these circumstances, the evidence compels the conclusion that Disqualifying Condition (DC) 2 is applicable ("the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire. . . "). MC 2 is only partially applicable in that while the falsification may be an isolated incident, it remains recent, in context, and was not voluntarily corrected until he was confronted by the DSS agent some five months later in 2001.

### **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

Guideline E (Personal Conduct) Against the Applicant

Subparagraph 2.a. 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**