

DATE: September 8, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-14333

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Lee Leveque, Esquire, Attorney at Law

SYNOPSIS

This 46-year-old employee of a defense contractor had four delinquent debt totaling about \$28,000 that were incurred during the unhappy breakup of an earlier marriage. All of the delinquent debts are now being paid under a Chapter 13 repayment plan and he is current with his other debts. Mitigation has been adequately established. Clearance is granted.

STATEMENT OF THE CASE

On November 25, 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 January 22, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made after a hearing by a DOHA Administrative Judge. The matter was assigned to me for resolution on March 3, 2004. A Notice of Hearing was issued on April 14, 2004, and the hearing was conducted on May 12, 2004. At the hearing, the Government submitted seven documents, which were marked for identification as Government's Exhibits (GX) 1- 7. Applicant testified and offered one exhibit, which was marked as Applicant's Exhibit (AX) A. Two post hearing submissions were timely received and marked as AX B and AX C. The transcript was received at DOHA on May 27, 2004.

FINDINGS OF FACT

Applicant is a 46-year-old employee of a defense contractor who is seeking a security clearance for Applicant in connection with his employment. The SOR contains five allegations under Guideline F (Financial Considerations). In

his response to the SOR, Applicant *admits* all five allegations, SOR 1.a. - 1.e., with explanations. The admissions are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence in the case file, I make the following additional FINDINGS OF FACT as to the status, past and present, of each SOR allegation:

Guideline F (Financial Considerations)

As of September 2, 2003, Applicant:

1.a. - was indebted to Creditor A for approximately \$2,175.00 on a past due account.

1.b. - was indebted to Bank B for approximately \$16,263.00 on an account that been charged off.

1.c. - was indebted to Credit Card C in the approximate amount of \$6,912.00 on an account that had been charged off.

1.d. - was indebted to Creditor D in the approximate amount of \$2,594.00 on an account that had been referred for collection.

1.e. - On April 10, 2000, Applicant filed for bankruptcy protection under Chapter 13. He cited assets of \$135,404.00 and debts of \$112,492.00. The bankruptcy was dismissed on October 30, 2001.

The delinquent debts cited above total approximately \$27,944.00. Applicant accepts responsibility for the debts cited in SOR 1.a - 1.d., above, although he claims his wife at the time is also responsible (Tr at 37 - 42). The largest debt is the home mortgage, possession of which was given to his wife during the divorce, along with the obligation to make monthly payments. She has been behind on a number of payments and Applicant is still jointly responsible for the debt if she does not do so (Tr at 49).

A second bankruptcy, also under Chapter 13, was filed on April 1, 2004. The debts alleged in SOR 1.a. - 1.d. are now being repaid under a Chapter 13 repayment plan (AX A and Tr at 18). Applicant has not charged anything since 1999 and all of his monthly payments are current (Tr at 44 - 46). Applicant has begun making payments under the court approved plan (AX C (three money orders totaling \$835.06). He has received two garnishment checks totaling \$598.00 from his ex-wife's paycheck and turned the money over to the bankruptcy trustee (AX B). He has also received court-ordered repayment from his ex-wife of several thousand dollars and these sums have also been turned over to the bankruptcy trustee (AX B).

Applicant spent 20 years in the U.S. Military and retired with an Honorable Discharge (Tr at 17). He is well thought of by his friends and colleagues, some of whom have also possessed a security clearance for long periods (Tr at 27). One witness, who was also divorced, knows about Applicant's divorce-related financial problems and sees him as a man of integrity and more a victim of his ex-wife's financial misconduct than his own (Tr at 30).

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.

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

Applicant is a man of 46, born in 1958. He first received a DoD Secret-level security clearance in 1995, at age 37 (GX 1 at page 9).

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.

According to Applicant's bankruptcy attorney (January 22, 2004 letter attached to response to SOR), the financial problems that led to the filing of the Chapter 13 petition on April 7, 2000 were substantially the result of unsettled conditions caused by the breakup of his marriage. The attorney recommended to Applicant that he wait until the divorce was final and all financial matters settled. Applicant did not want to wait and insisted in an immediate filing. He subsequently came to understand that he had acted precipitously since debts not included in the filing would remain owing and would probably require another bankruptcy filing. As a result, he had the bankruptcy petition dismissed, leaving all debts still owing.

During the following three years, Applicant was out of work for six weeks after an operation in April 2003 and his daughter was killed in an auto accident in August 2003. Despite being out of work for six weeks, Applicant was able to

pay his current debts, but was unable to pay down the old debts (Id.). Finally, in January 2004, Applicant met with his bankruptcy attorney, who suggested refiling. Applicant resisted the advice at first and contacted a consumer credit counseling service (CCCS). The figure the CCCS arrived at was \$890 per month and did not include the mortgage debt. He then returned to the bankruptcy attorney and arranged for the refiling of the bankruptcy petition, with current debts and amounts (Tr at 16), in April 2004 (GX 4).

The nature and causes of Applicant's financial problems are not uncommon, and include family, marital, and medical problems. Bankruptcy is a legal way of resolving debts with a court's authorization. It can raise questions in the context of security clearance eligibility, but usually only when the facts and circumstances of the bankruptcy suggest questionable judgment, reliability, and trustworthiness, such as multiple filings, preplanning, abuse, etc. The record does not indicate anything of that nature in the present case.

The concern expressed in the preamble of Guideline F is that excessive debt raises the risk that a person might perform illegal acts to generate funds. That is clearly not a risk under the facts in the present case since the pressure of the delinquent debts has been eased by the bankruptcy repayment plan and that the amount owed has been significantly reduced by his payments. The secondary concern in Guideline F cases is that the manner in which the debts were incurred and were/are being paid off or resolved may show questionable judgment, unreliability, or untrustworthiness.

Disqualifying Conditions (DC) 1 - a history of not meeting financial obligations; and DC 3 - inability or unwillingness to satisfy debts are both applicable. I have also considered that Mitigating Conditions (MC) under Guideline F. The financial problems remain "recent" (MC 1); and are not "an isolated incident" (MC 2). However, the debts do appear to have been the result of conditions beyond Applicant's control (MC 3) and Applicant has clearly made a "good faith effort to repay overdue creditors or otherwise resolve debts" (MC 6). I conclude that the mitigating conditions outweigh the disqualifying ones.

Applicant is remarried, is working full time, and has no new or current delinquent debts. Under the totality of the evidence, I conclude that the mitigating conditions outweigh the disqualifying ones and that Applicant appears to be well on the way to financial rehabilitation, with minimal risk of recurrence. In retrospect, while he certainly might have acted earlier, his choice of Chapter 13 over Chapter 7 bankruptcy shows that he was not seeking to avoid responsibility for all his debts, but was simply seeking time to pay them off. I conclude that Applicant has demonstrated the integrity that, along with his past military and work record, makes him a suitable candidate for 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) 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