

DATE: March 10, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-18551

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 44-year-old facility security officer retired from the military in 1999, and had a problem finding a job with pay comparable to what he had been receiving. He accumulated seven delinquent debts totaling about \$9,100. He has obtained a position that has allowed him to pay off or resolve most of the debts and is seeking to resolve the last two. He has demonstrated substantial financial rehabilitation. Mitigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On July 28, 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 August 19, 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 October 22, 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 November 23, 2003. Applicant submitted a timely response to the FORM. The matter was assigned to me for resolution on January 28, 2004.

FINDINGS OF FACT

Applicant is a 44-year-old facility security officer for a defense contractor. The July 28, 2003 SOR contains seven allegations under Guideline F (Financial Considerations), 1.a. - 1.f., all pertaining to delinquent debts to different creditors. In his August 19, 2003 response, Applicant *admitted* allegations 1.e and 1.g., with explanations. He *denied* allegations 1.a - 1.d.,and 1.f. The admitted allegations are incorporated herein as Findings of Fact.

The SOR financial allegations (creditors and amounts) are based on Applicant's answers to questions about specific debts that were asked by an agent of the Defense Security Service (GX 5) and to further information and a copy of a credit bureau report submitted by Applicant as part of his response to Interrogatories (GX 6).

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

Guideline F (Financial Considerations)

As of November 19, 2003, Applicant owed:

- 1.a. - A debt of \$979.00 owed to Creditor A was charged off and closed by the creditor in December 1999 (GX 6). Applicant claims this debt was paid off in 2002 (GX 5), which appears to be corroborated by its absence from the November 19, 2003 credit report. A January 22, 2002 letter from the creditor confirms the resolution of the debt by Applicant's payment of a settlement amount.
- 1.b. - A debt of \$300.00 owed to Creditor B is now current and has a zero balance (November 19, 2003 credit report).
- 1.c. - A debt of \$123.00 owed to Telephone Company C has been paid off (Response to SOR)
- 1.d. - A debt of \$179.00 owed to Creditor D was charged off as a bad debt in October 2003 (Response to SOR).
- 1.e. - A debt owed to Creditor E of \$774 was charged off, but has subsequently been paid off and has a zero balance (November 19, 2003 credit report).
- 1.f. - A debt, owed to Military Exchange F, was originally \$4,224, was reduced through payments to \$3,094 and then to \$772, according to a November 19, 2003 credit report, which cited the account as a "charge off," although Applicant is "still making payments."
- 1.g. - A debt of \$84 owed to Telephone Company G was paid off as of November 5, 2003 (Response to FORM).

Applicant's demonstrated efforts to clear his credit record qualify as a good faith effort. He now has the assets to make substantial payments on his debts and has substantially paid off or reduced the amounts still owed. He has retained a law firm to assist him in locating several of the creditors he has not been able to identify on his own, and the law firm confirms Applicant's efforts to resolve the remaining debts (Letter from Law Firm, dated November 21, 2003).

Applicant's written submission of November 20, 2003 makes a strong case that Applicant's financial problems arose from insufficient income, rather than excessive spending. With a promotion at work and a higher income, Applicant is now able and motivated to bring himself current. In addition, with his new position as Facility Security Manager, he has an increased understanding of the necessity of exercising good judgment in his financial dealings.

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 god-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 he has been making a diligent effort to repair his credit record, even retaining legal counsel to advise him. After Applicant came out of the military in 1999 (GX 4), he had a difficult time adjusting to civilian life, including managing his finances.

This was mainly due to his inability to find a position with a salary close to what he was used to in the military (GX 5 and GX 6). With his recent promotion, he has now done so. The total amount of the seven delinquent debts alleged in the SOR is \$9,158.00. Applicant's Personal Financial Statement, attached to his ay 2003 Response to Interrogatories (GX 6) shows him to be receiving \$1,191.00 per month in military retirement in addition to his salary and that of his wife. He shows a monthly "net remainder" of \$1,123.11.

In this context, I conclude that while Disqualifying Conditions 1 and 3 are applicable. I also conclude, however, that many of Applicant's financial problems did arise from a difficult adjustment from military to civilian life, so Mitigating Condition (MC) 3 is also applicable. In addition, MC 4 and 6 are also applicable, since the legal and financial advice and counseling he has obtained has led him to greatly improve his situation. He has paid off, or at least substantially reduced, most of the cited delinquent debts, while actively seeking to resolve the few remaining ones.

Overall, I conclude that Applicant's delinquent debts were not incurred out of any extravagant living and do not suggest the exercise of poor judgment, unreliability, or untrustworthiness. Based on his past contributions to our nation and a showing of significant financial rehabilitation, there is minimal risk that he would act contrary to U.S. security interests.

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

Subparagraph 1.f. For the Applicant

Subparagraph 1.g. 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