

DATE: October 13, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-18678

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 59-year-old employee of a defense contractor has paid off most of his delinquent debts and intends to pay or otherwise resolve the remainder in the near future. The Financial Considerations concerns have been mitigated. As to the Personal Conduct concerns, two of the three financial-related falsifications of his answers to questions on his SF 86 were material and deliberate and no mitigation has been established. Clearance is denied.

HISTORY OF THE CASE

On January 15, 2004, 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 February 17, 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 April 7, 2004. A Notice of Hearing was issued on April 27, 2004, and the hearing was conducted on June 3, 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 nine exhibits, which were marked as Applicant's Exhibit (AX) A - I. One timely post hearing submission was received through Department Counsel and marked collectively as AX J. The transcript was received at DOHA on May 27, 2004.

FINDINGS OF FACT

Applicant is a 59-year-old employee of a defense contractor who is seeking a security clearance for Applicant in

connection with his employment. The SOR contains 22 allegations under Guideline F (Financial Considerations) and three allegations under Guideline E (Personal Conduct-Falsifications).

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

Guideline F (Financial Considerations)

In his response to the SOR, dated February 17, 2004, Applicant *admitted* allegations, SOR 1.a., 1.b., 1.c., 1.d., 1.f., 1.g., 1.h., 1.i., 1.j., 1.k., 1.m., 1.n., 1.o., and 1.p., below. He *denied* only allegations 1.l., and 1.q. Since his single response to allegations 1.r.- 1.v. is not stated to be an admission, I deem it to be a denial. Under Guideline E (Personal Conduct), Applicant admitted allegation 2.c., but denied allegations 2.a. and 2.b. The cited admissions are incorporated herein as Findings of Fact.

1.a. - Appellant had petitioned for Chapter 13 bankruptcy on November 3, 1999. His case was dismissed on February 15, 2001, on the grounds that he failed to make Chapter 13 payments. Despite the Chapter 13 installment plan, he found himself still overextended and unable to make the required payments (Tr at 29). The debts for which he remained responsible are listed below and he owes the cited creditors the following approximate delinquent debts (charged off, referred for collection, etc.):

1.b. - Medical Group A - \$142; 1.c. - Medical Group A - \$118; 1.d. - Medical Group A - \$215. All three remain unpaid

The above three accounts were partially paid by Applicant's insurance coverage. Applicant believes the insurance company should have paid the balance due beyond his deductible. The debts were incurred in 1998 or 1999, and they remain unresolved, despite occasional correspondence. They appear on the most recent credit report Applicant has seen (Tr at 30, 31).

1.e. - Emergency Medical Group B - \$221. Applicant denied this allegation. He has "no idea what this company is" (Tr at 31), but in the context of the dates and other medical-related debts, I find it more likely than not that this debt is Applicant's responsibility. Remains unpaid.

1.f. - Bank C - \$222.60. Applicant states that this debt pertains to a "secure" credit card that he obtained but never used, and that the debt is a "security charge" imposed by the creditor. Since the debt is admitted and never resolved, I find it to be a valid debt of Applicant's that remains unpaid

1.g. - Loan Company D - \$810. This debt was paid off by check on May 27, 2004 (Tr at 33, AX A). Paid.

1.h. - Bank E - \$2,442. Applicant admits this \$2,442 debt from 1999, but claims the creditor agreed to settle it for a single payment of \$1,317. The matter was never actually resolved and the debt remains unpaid (Tr at 34).

1.i. - Medical Center F - \$100. Like the debts alleged in SOR 1.b. - 1.d., this debt is one that Applicant believes his insurance company should have paid. It remains unpaid (Tr at 34, 35).

1.j. - Credit Company G - \$454. This debt remains unpaid (Tr at 35).

1.k. - Credit Card H - \$547. This debt was paid off on May 24, 2004 (AX B).

1.l. - Telephone Company I - \$85. Applicant claims the creditor told him their records show no debt owing, but he has not produced any documentation of his claim. I find the debt to be open and unpaid.

1.m. - Credit Card J - \$470.64. This debt was recently paid on May 27, 2004, by a bank check for \$897.00 (Tr at 35 and AX C).

1.n. - Corporation K - \$9,276. This debt (auto repossession) was recently paid on May 27, 2004, by a bank check for \$9,276.00 (Tr at 35 and AX D).

1.o. - Medical Center F - \$46. Unpaid (Tr at 35).

1.p. - Medical Center F - \$26. Unpaid (Tr at 35).

1.q. - Disposal Service L - \$423.82. Paid on April 23, 2004 (Tr at 35 and AX E).

1.r. - City M Sewer Department - \$266.26; 1.s. - City M Sewer Department - \$154.44; 1.t. - City M Sewer Department - \$162.27; 1.u. - City M Sewer Department - \$154.47; and 1.v. - City M Sewer Department - \$152.68. All five sewer-related debts were paid in April 2004 (Tr at 35 and AX F and AX G).

Applicant's delinquent debts have been reduced from 22 to 12 in number and the amount owed has been reduced from about \$17,000 to about \$3,700. Nearly \$12,000 of the reduction results from four checks issued to Applicant by a Title Company (AX A, AX B, AX C, and AX D).

Guideline E (Personal Conduct)

Applicant falsified material facts on his February 19, 2002 Security Clearance Application (SF 86) when he responded to Question:

2.a. - 25 Your Financial Record - Repossessions, "In the past seven years, have you had any property repossessed for any reason?"; to which Applicant stated "No"; and failed to cite the April 2001 repossession cited in SOR 1., above. Applicant states that he voluntarily returned a car

to the vendor and was never made aware the creditor considered it (1) to be a repossession and (2) reported it as such to the credit reporting services (Response to SOR, Tr at 36). Nothing in the case file indicates that Applicant knew and had reason to know that his voluntary return of the car amounted to a "repossession," as that term appears in Question 25.

2.b. - 36. Your Financial Record - Tax lien, "In the past seven years, have you had a lien placed against your property for failing to pay taxes or other debts"; and failed to cite the property lien files against you, as cited in 1.q., 1.r., 1.s., 1.t., 1.u., and 1.v., above. Applicant's explanation is that he "just thought, I don't have any liens on the house, but I did, my mistake" (Tr at 36). He added that he "probably did receive a notice of a tax lien, [but] did not open up the envelope" (Tr at 71). However, from the information of record, it appears that notices of property tax liens for nonpayment of sewer fees, occurred on various occasions over a period of more than a year in 1999 and 2000. In the context of the entire record, I do not find it credible that Applicant was unaware of liens, either some of them or all of them at time he answered "No" to this question.

2.c. - 38 Your Financial delinquencies - 180 Days, "In the last seven years, have you ever been over 90 days delinquent on any debt(s)"; and **39 -Your Financial Delinquencies - 90 Days**, "Are you currently over 90 days delinquent on any debt(s)"; and in each case he answered "No" and deliberately failed to cite the debts cited in 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., 1.k., 1.l., 1.m., 1.n., 1.o., 1.p., 1.q., 1.r., 1.s., 1.t., 1.u., and 1.v., above. His explanation is that "when I filed bankruptcy, I thought the delinquencies would be wiped out, that they didn't show any more, but I was wrong. I didn't do that intentional (*sic*), that is my understanding that when I filed, I thought everything would go away, but it did not" (Tr at 36).

The bankruptcy petition was filed on November 3, 1999 and dismissed on February 15, 2001. The SF 86 was signed on February 19, 2002, a full year later. A Chapter 13 requires payments under a plan, and since his failure to make such payments led to the bankruptcy being dismissed, not discharged, it runs contrary to reason that Applicant believed or had reason to believe that he no longer had any legal obligation to honor the debt. His excuses lack credibility.

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

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 the possible Mitigating Conditions (MC) under Guideline F. Applicant's financial problems remain "recent" (MC 1); and are not "an isolated incident" (MC 2). It is not clear that the cited debts were substantially the result of conditions beyond Applicant's control (MC 3). The delinquent debts began in about 1999. Applicant has recently made a "good faith effort to repay some, but not all, of his overdue creditors or otherwise resolve debts" (MC 6).

Applicant has made good progress in resolving his debts beginning with some about two years ago and others, including the largest at more than \$9,000, within the months just prior to the hearing, using funds obtained from his trust company.

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. Applicant has consulted a financial counselor. Overall, the record indicates the problem to be family-based rather than the result of extravagant living. He has promised to continue his efforts to repay the remaining debts, some \$3,700 out of the original \$17,000 (Tr at 55).

Applicant is divorced, works 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. He failed to do so at the time because of inadequate funds, but has made significant progress recently. I conclude Applicant has now demonstrated financial integrity.

Guideline E (Personal Conduct)

The allegations under this guideline relate to Applicant's falsification of answers to three questions on his February 19, 2002 SF 86: **35** (repossessions), **36** (tax liens or other debts), and **38** (delinquencies over 180 days in last seven years and 90 days currently). Other than violations of the rules governing the care and protection of classified material, falsifications on SF 86s go most directly to the heart of the security clearance program.

Applicant provided different explanations for the three omissions, and only one is persuasive,

that for Question 35. From the entirety of the record, I conclude that Applicant gave incorrect answers to all three questions, and that as to Questions 36 and 38, he knew and should have known the correct answers, that he had omitted the correct information with the hope that it would not be detected, and that his conduct was deliberate. .

Disqualifying Condition 2 (the deliberate omission, concealment, or falsification of relevant and material facts from his SF 86) is applicable. No mitigating conditions are established by the record; e.g., MC 2 - the falsifications were not "an isolated incident," remain "recent," and the correct information was not provided "voluntarily." MC 3 -Applicant did not make a prompt, good-faith effort to correct the falsification before being confronted with the facts.

Overall, I conclude that Applicant has adequately mitigated the financial considerations concerns, but not the personal conduct-falsification concerns.

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. - 1.v. For the Applicant

Guideline E (Personal Conduct) Against the Applicant

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.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