

DATE: August 30, 2004

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In Re:

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SSN:-----

Applicant for Security Clearance

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ISCR Case No. 02-19502

**DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

This 63-year-old employee of a defense contractor had Federal and State income tax problems covering the late 1990s and early 2000s. The problems are being resolved by payments being made under a Chapter 13 bankruptcy repayment plan. A majority of the debt load has already been repaid. Mitigation has been adequately established. Clearance is granted.

**STATEMENT OF THE CASE**

On January 20, 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 13, 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 23, 2004, and the hearing was conducted on May 11, 2004. At the hearing, the Government submitted eight documents, which were marked for identification as Government's Exhibits (GX) 1 - 8. Applicant testified and offered seven exhibits, which were marked as Applicant's Exhibits (AX) A - G. The transcript was received at DOHA on ay 21, 2004.

**FINDINGS OF FACT**

Applicant is a 63-year-old employee of a defense contractor who is seeking a security clearance for Applicant in connection with his employment. The SOR contains three allegations under Guideline F (Financial Considerations). In his response to the SOR, Applicant *admits* all three allegations, SOR 1.a. - 1.c., with explanations. The admitted allegations are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence derived from Applicant's testimony and all exhibits, 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. - filed a voluntary petition for bankruptcy on March 6, 2003. He listed total assets of \$131,625.00 (\$104,000 of which is a house) and total liabilities of \$150,063.16. As of October 7, 2003, the Chapter 13 repayment plan had not been confirmed. However, on January 21, 2004, the repayment plan was confirmed by the bankruptcy Judge. Between April 2003 and February 2004, Applicant had paid about \$12,000 under the approved repayment plan (AX C and AX F).

1.b. - was indebted to the Internal Revenue Service for unpaid Federal income taxes for Tax Years (TY) 1995, 1997, 1999, and 2001, in the approximate amount of \$6,657.50. This debt is being paid under the Chapter 13 repayment plan (*Id.*)

1.c. - As of April 4, 2003, had failed to file his State A tax returns for TY 1997, 1998, and 1999. He has filed the late returns and the debt (\$745.00) was included in the bankruptcy plan (*Id.*).

The senior supervisor at Applicant's employer thinks highly of Applicant and is not aware of his ever having had any problems relating to classified information (Tr at 24 - 26). A co-worker who is also the security officer is also not aware of any problems (Tr at 27, 28). Applicant's wife testifies that she had been in an auto accident, and has suffered from depression, for which she took medication for her depression until at least Christmas 2003 (Tr at 33). She became involved in excessive gambling, resulting in the incurring of much of the family's significant debt. She was involved in the March 2003 bankruptcy filing (Tr at 30 - 32). They were married in about 1994, separated for a while and reconciled in April 2004 (Tr at 32, 34). Applicant is a former deputy sheriff and security officer (GX 1).

### 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.

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 was born in 1941. He first received a DoD Secret-level security clearance in 1960 (GX 1). The Government's stated concerns pertain to his unpaid Federal income taxes, his failure to file State A income tax returns for 1997-1999, and his filing for Bankruptcy protection in 2003.

*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 also conclude however, that Applicant has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (MC 6).

1.a. - The Chapter 13 bankruptcy has now been completed and Applicant has made significant payments under the plan. Applicant's wife's excessive gambling, was the primary cause of their filing for bankruptcy (Tr at 34, 35, 40-43). The delinquent taxes were the result of his prior divorce (Tr at 50). Both Federal and State A income tax debts are covered by the Chapter 13 bankruptcy (Tr at 65, GX 6 at pages 55, 67, 68, 94, 101, 103 at AX C and AX F). He has paid about \$12,000 under the repayment plan so far (Tr at 59). Applicant has shown that his financial situation has greatly improved in the past few years (Tr at 46, 47). Two credit union transaction summaries, for March and April 2004 (AX A and AX B), show ending checking account balances of \$2,406.00 and \$2,642.42, respectively (Tr at 41-43).

1.b. - As to the unpaid federal taxes for TY 95, 97, 99, and 2002, these were business related taxes that Applicant claims his wife was supposed to have made (Tr at 38) and she claims she was unaware of (Tr at 34). It appears that they owned a business and his wife handled the business's finances. She had not paid the "quarterlies" tax installments, and "the IRS came after me" (Tr at 38). He states that the amount claimed owing had been substantially reduced and, in any case, is now covered by the bankruptcy installment plan (Tr at 39).

1.c. - Applicant moved to State A from a state that had no income taxes, and in which he had lived for 27 years. He claims he just didn't think about state taxes for the first three years. He currently makes about \$33,500 per year (Tr at 53). He expects to pay off the entire amount owed within 36 months (Tr at 58).

The Bankruptcy Chapter 13 Trustee's Report of Receipts and Disbursements, dated March 9, 2004, shows that as to the two debts cited in the SOR, the IRS has a ".00" claim balance and that State A has a combined "priority and unsecured" claim balance of \$744.00 (AX C).

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, unreliability, and untrustworthiness, such as multiple filings, preplanning, etc. The record in the present case does not indicate anything of that nature. Applicant's closer attention to his tax obligations could certainly have avoided the present situation, but it appears to have been situational and an aberration in life of 63 years and no apparent security problems over a 40-year career. I conclude he can be relied upon to protect classified information and materials.

### **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

### **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**