

DATE: August 25, 2004

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In Re:

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SSN:-----

Applicant for Security Clearance

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ISCR Case No. 02-20738

**DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

**APPEARANCES**

**FOR GOVERNMENT**

Catherine M. Engstrom, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

This 37-year-old hazardous waste technician has a history of financial problems that continue to exist. He has seven delinquent debts totaling close to \$7,000. He has not yet made any significant inroads into his debt load, which continues to increase because of interest charges. He has not documented his claimed payments. Mitigation has not been adequately established. Clearance is denied.

**STATEMENT OF THE CASE**

On September 12, 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 3, 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 March 25, 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 May 1, 2004. Applicant responded to the FORM within that period. The matter was assigned to me for resolution on June 14, 2004.

**FINDINGS OF FACT**

Applicant is a 24-year-old apprentice at a shipyard. The September 12, 2003 SOR contains six allegations under Guideline F (Financial Considerations). In his October 3, 2003 response to the SOR, Applicant *admits* all six allegations under Guideline H, SOR 1.a. - 1.f.; some with explanations. 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 and the FORM, I make the following additional FINDINGS OF FACT as to the status, past and present, of each SOR allegation <sup>(1)</sup>:

#### Guideline F (Financial Considerations)

As of May 9, 2003, Applicant:

1.a. - was indebted to Creditor A in the approximate amount of \$1,579.00, on a delinquent account that had been charged off as a bad debt.

1.b. - was indebted to Creditor B in the approximate amount of \$525.00, on a delinquent account that had been charged off as a bad debt.

1.c. - was indebted to Creditor C in the approximate amount of \$2,650.00, on a delinquent account that had been charged off as a bad debt.

1.d. - was indebted to Creditor D in the approximate amount of \$176.00, on a delinquent account that had been turned over for collection.

1.e. - was indebted to Creditor E in the approximate amount of \$1,579.00, on a delinquent account that had been charged off as a bad debt.

1.f. - was indebted to Creditor F in the approximate amount of \$407.00, on a delinquent account that had been turned over for collection.

Some of the delinquent debts go back to 1997. Applicant was divorced on 2000 and some of the debt was incurred by his now ex-wife. He is highly thought of by his immediate work supervisor and is active in his church and community (June 1, 2004 letter in case file). The letter does not refer to Applicant's financial problems.

#### **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 analysis is necessarily limited to the contents of the various documents that are found in the case file, the latest of which is Applicant's responses to the SOR and the FORM.

#### ***Financial Considerations-***

Based on Applicant's admissions and the balance of the record, it is clear that Applicant has a history of financial problems and mismanagement going back a number of years. Applicant's security clearance application, SF 86, was completed on June 26, 2002. As of the issuance of the SOR on September 12, 2003, the seven cited debts, totaling about \$6,916.00 were still delinquent.

In his response to the SOR, Applicant admitted all seven debts, some with explanations. As to the creditor in SOR 1.b., Applicant claims that the cited debt of \$545.00 was settled on October 1, 2003 for \$200.00, but there is no receipt in the FORM showing this payment and settlement. There is a letter from an attorney representing the creditor, showing a balance owed of \$545.07 (Item 6.g).

As to SOR 1.c., which alleges a debt of \$2,650.00, Applicant claims he is making payments of \$50.00 per month (Item 2). Applicant has provided a statement from the creditor's collection agent, showing a balance of \$2,650.00, and including a statement by Applicant that he will begin making \$50.00 payments on ay 5, 2003 (Item 2f). However, there is nothing in the record showing that Applicant had in fact made any payments and/or that the balance had been reduced. Likewise, although Applicant claims the \$176.00 debt alleged in SOR 1.d. was settled for \$88.45, there is no supporting documentation.

The FORM was issued on March 25, 2004 and Applicant was informed that he had 30 days from the date he received the FORM to submit any response. The response was due by May 1, 2004.

Applicant did submit a letter and attachments on June 15, 2004, which were accepted and added to the file by Department Counsel (Item A). In this most recent communication, Applicant's cover letter states that he is "making attempts to try and pay off my debts. I have made arrangements to have money taken out of my check weekly, [beginning] June 18, 2004."

Also, part of Item A is a credit report dated May 10, 2004. It continues to show the debts cited in SOR as follows: 1.a. - \$1,579.00 charged off; 1.b. - charged off; 1.c. - closed and charged off; 1.e. - charged off; and 1.f. - closed and charged off. The debt cited in SOR 1.e. is not shown. A letter from a law firm, dated April 30, 2004, shows the \$525 debt cited in 1.c. to have been resolved by a payment of \$63.96 (*Id.*), but there is no statement or explanation from the creditor acknowledging such a resolution or explaining why it agreed to accept such a small percentage of what was owed.

Documentation from another law firm, dated April 20, 2004, states that the \$1,579.00 debt to the creditor cited in 1.a. has been "settled" - amount not stated; but a second document, dated April 14, 2004, from Applicant's employer, provides the detail that Applicant had asked to have \$26.00 per pay check withheld and sent to the creditor cited in 1.a. until a total of \$2124.61 had been repaid. In other words, the balance owed the creditor has increased from \$1,579.00 to \$2,124.61, but nothing had as yet been paid.

An April 6, 2004-memorandum from his employer's payroll department shows the garnishment of his wages as follows: 2002 - \$1,387.01; 2003 - \$990.00; and 2004 - \$194.16, but there are no records identifying the debts that were the subject of the garnishment.

In summary, Applicant's failure to resolve his debts has led to the amounts still owed being higher than before. In what seems to be an extreme example of procrastination, at this late stage of the adjudication, Applicant has still not yet produced documentation of his claimed efforts to resolve his longtime delinquent debt load or even that some of the debts on which he claims to have acted, have in fact been receiving payments.

Disqualifying Conditions (DC) 1 (a history of not meeting financial obligations) and DC 3 (inability or unwillingness to satisfy creditors) are clear. At the same time, Applicant has not established the applicability of any of the possible mitigating conditions (MC). His financial problems are still recent (MC 1) and cannot be considered an isolated incident (MC 2). His efforts at resolution have not yet reached the level that they can be considered a "good faith effort to repay overdue creditors or otherwise resolve debt" (MC 6).

### **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

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. 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**

1. The FORM contains a motion to amend the SOR at several places to conform to the evidence of record. Applicant has not submitted any objection and I have verified the concerns expressed by the Government. The SOR is therefore amended as requested and the following evaluation and decision are based on the corrected information.