

KEYWORD: Financial; Personal Conduct

DIGEST: This 38-year-old truck driver has a history of financial irresponsibility extending to the present day. He shows little understanding of his financial responsibilities for his own debts and is still only promising to begin substantive efforts toward resolving his debts and demonstrating financial rehabilitation. No mitigation has been shown. Clearance is denied.

CASENO: 03-18936.h1

DATE: 03/14/2005

DATE: March 14, 2005

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In Re:

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SSN:-----

Applicant for Security Clearance

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ISCR Case No. 03-18936

**DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

This 38-year-old truck driver has a history of financial irresponsibility extending to the present day. He shows little understanding of his financial responsibilities for his own debts and is still only promising to begin substantive efforts toward resolving his debts and demonstrating financial rehabilitation. No mitigation has been shown. Clearance is denied.

**STATEMENT OF THE CASE**

On June 29, 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 July 23, 2004, 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 August 11, 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 September 24, 2004, but none was submitted by Applicant. The matter was assigned to me for resolution on October 13, 2004.

### FINDINGS OF FACT

Applicant is a 37-year-old employee of a defense contractor (Response to FORM). The December 31, 2004 SOR contains 12 allegations under Guideline F (Financial Considerations) and one allegation under Guideline E (Personal Conduct). In his July 23, 2004 response to the SOR, Applicant *admits* all 12 allegations under Guideline F (1.a.-1.l.) and did not respond to the single Guideline E allegation (2.a.), which I deem to be a denial. The admitted allegations are accepted and incorporated herein as Findings of Fact.

**Guideline F** (Financial Considerations) - As alleged in the SOR, Applicant owes the following debts that are delinquent, past due, charged off or referred for collection

- 1.a. - Collection Agency A for \$1,278;
- 1.b. - Collection Agency B for \$1,094;
- 1.c. - Department Store C for \$449;
- 1.d. - Department Store D for \$1,887;
- 1.e. - Bank E for \$1,770 (two accounts);
- 1.f. - Credit Card F for \$1,760;
- 1.g. - Credit Card G for \$3,043;
- 1.h. - Company H for \$4,569;
- 1.i. - Credit Management Company I for \$868;
- 1.j. - Collection Agency J for \$895;
- 1.k. - Collection Agency K for \$1,938;
- 1.l. - Finance Company L for \$3,383.

**Guideline E (Personal Conduct)** - This is an unusual case in that Applicant did not submit a response to the 2004 FORM, nor did he go beyond saying "I admit" as to all twelve financial allegation (SOR 1.a - 1.l.). That means that Applicant's last discussion of his financial situation is found in his Answers to Financial Interrogatories, which is dated March 15, 2004, and was used by the Government in support of the issuance of the SOR. Based on all of the evidence including his admissions of SOR 1.a-1.l., I conclude that Applicant was aware of all of his delinquent debts, which had accrued over the years, and deliberately omitted any mention of them in his answer to Question 39 of his February 2002 SF 86, specifically 1.c., 1.d., 1.f., 1.g., 1.k., and 1.i., above. In fact, he answered No to all of the SOR's finance-related questions, 33-40.

## 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 evaluation is necessarily limited to the contents of the various documents that are found in the case file, the most recent of which are Applicant's July 23, 2004 response to the SOR and, prior to that, his response to the Interrogatories, which is dated March 15, 2004.

#### Guideline F (Financial Considerations)

The Government's documentation in support of the SOR, including but not limited to his admissions, establishes the existence of the twelve cited delinquent debts in the amounts cited in the SOR. I have carefully evaluated Applicant's claims about the debts, which is basically that he has no debts because he is "bankrupt," according to the Personal Financial Statement that is part of his sworn statement of March 15, 2004 (GX 6). On the last page of that exhibit, he adds the following:

"This is to inform you that I do not receive a pay check, because I live with my aunt and uncle and they support me and take care of all my medical needs. Also all the bills that are listed on (the SOR) I plan to file bankruptcy."

He previously submitted an earlier sworn statement on August 4, 2003, in which he described himself as an independent truck driver who works for his uncle's company. He does not receive a salary for his services, but is provided with room and board and his road expenses are compensated (GX 8). He does not dispute the debts and explains them as follows:

"The delinquent "debts were due to carelessness, irresponsibility, and lack of work. I have no intention of paying those charge-off accounts listed on my CBR [credit bureau reports] that are seven years older. The ones that are less than seven years old I will use a debt consolidation service to pay them off. . .If the bill consolidation is approved, my uncle will make the payments for me as long as I am driving for my uncle."

There is much that is puzzling about this case. Applicant has worked for his present employer as an independent "self employed" truck driver, since April 1998 (GX 4). The company belongs to Applicant's uncle, with whom he has lived since 1990. The uncle who uses Applicant to drive loads around as needed. Applicant received no salary, but only room and board and compensation for trucking expenses. This is not the appropriate place to question the legalities of the employment relationship. By Applicant's admissions, he has no income, but has managed to accumulate increasing amounts of delinquent debt.

Some of the delinquent debts go back more than a decade, and it is surprising that there are a few debts listed on the latest CBR (GX 9) shown as current and bearing the notation "pays as agreed." It is not clear where the payment funds come from. Applicant's statement that he will not pay the debts that are more than seven years old implies an

understanding that the older debts may be dropped from the CBR because of age. Such a practice does not show good financial judgment and is not compatible with holding a security clearance.

Likewise, his plan to contact a debt consolidation service as to the newer debts, work out a payment plan, and have his uncle make the payments for him does not in any way establish financial rehabilitation. The lack of any regular income and the size of his delinquent debts necessarily raises serious doubts about his ability and willingness to resolved the massive debts for which he has remained responsible for so many years.

#### Guideline E (Personal Conduct)

Applicant's failure to answer Question 39 on his SF 86 truthfully is likewise troubling. He says: "The reasons why I did not list my financial problems on my security clearance application [is] because I was not sure of how many accounts were delinquent" (GX 8 at page 4). Under these circumstances, his intentional failure to disclose his delinquent debts, regardless of number, is patently irresponsible.

Disqualifying Condition 2 (the deliberate omission, concealment or falsification of material facts from any personnel security questionnaire (SF 86)) is clearly applicable. Based on all of the available evidence, I conclude that the falsifications are both serious and current. At the same time, Applicant has not overcome the negative impact of the evidence by any sufficient evidence of mitigation.

In summary, Applicant has not mitigated either Guideline, but in the year that must pass before he can reapply for a security clearance, he will have the opportunity to finally resolve his delinquent debts.

### **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

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. Against the Applicant

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. Against the Applicant

Subparagraph 1.k. Against the Applicant

Subparagraph 1.l. Against the Applicant

Guideline E (Personal Conduct) Against the Applicant

Subparagraph 2.a. 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

