

KEYWORD: Financial

DIGEST: This 50-year-old technician has a history of financial irresponsibility extending over more than a decade and includes more than \$107,000 in child support arrearage. He has paid off some of the smaller debts but the child support debt continues to grow. Overall, he has not yet made significant inroads into his massive debt, and has not established he is on the road to financial rehabilitation. Mitigation has not been established. Clearance is denied.

CASENO: 03-20107.h1

DATE: 03/18/2005

DATE: March 18, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-20107

**DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

Robert S. Fink, Esquire

**SYNOPSIS**

This 50-year-old technician has a history of financial irresponsibility extending over more than a decade and includes more than \$107,000 in child support arrearage. He has paid off some of the smaller debts but the child support debt continues to grow. Overall, he has not yet made significant inroads into his massive debt, and has not established he is on the road to financial rehabilitation. Mitigation has not been established. Clearance is denied.

**STATEMENT OF THE CASE**

On June 16, 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 3, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was assigned to me for resolution on September 15, 2004. A Notice of Hearing was issued on January 4, setting the matter for January 6, 2005. At the hearing, the Government introduced four exhibits (Government's Exhibits (GX) 1-4). Applicant testified and introduced 14 exhibits (Applicant's

Exhibits (AX) A-N. He subsequently submitted a timely post hearing exhibit (AX O). The transcript was received at DOHA on January 21, 2005.

### **FINDINGS OF FACT**

Applicant is a 50-year-old technician for a defense contractor (GX 1). The June 21, 2001 SOR contains 10 allegations under Guideline F (Financial Considerations). In his July 23, 2004 response to the SOR, Applicant *denies* allegations 1.a. -1.h. and *admits* allegation 1.i. and 1.j. The admitted allegations are accepted and incorporated herein as a Finding of Fact.

**Guideline F** (Financial Considerations) - As of the date of issuance of the SOR, June 21, 2001, Applicant owes the following debts that are delinquent, past due, charged off or referred for collection

- 1.a. - Dr. A for \$107 (Present status - resolved);
- 1.b. - Anesthesiologist Service B for \$2,451 (Present status - in dispute pending resolution);
- 1.c. - Health Center C for \$93 (Present status - paid off);
- 1.d. - Medical Center D for \$158 (Present status - paid off);
- 1.e. - Medical center E for \$93 (Present status - paid off);
- 1.f. - Medical Center F for \$141 (Present status - paid off);
- 1.g. - Medical center G for \$139 (Present status - paid off);
- 1.h. - Emergency Care H for \$201 (Resolution pending).

Applicant remains indebted to:

- 1.i. - State X for a tax lien of \$2,700; and
- 1.j. - County Y for child support arrearage - \$107,000. (Up from \$103,000 cited in SOR. Current amount includes continuing penalties and interest and takes into account recent payments by Applicant).

## 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**

### 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 10 delinquent debts in the amounts cited in the SOR.

Most of the delinquencies occurred in or about 1999. The eight medical-related debts (1.a.-1.h.) total a little more than \$3,000. The tax lien of \$2,700 and the child support arrearage of about \$107,000 go back even further.

Applicant testified and his documentation corroborates that the medical-related debts have been paid off (1.d. - 1.g.) or otherwise resolved (1.a.); are in dispute or a resolution is pending (1.b. and 1.h.). The larger debts, still outstanding, are the state tax lien for \$2,700 (1.i.) and the child support arrearage (1.j.).

SOR 1.i. - The amount claimed by the state has risen to \$5,673 in taxes, interest, and penalty (AX O -Letter to Internal Revenue Service). In this February 4, 2005 letter, Applicant raised his offer in compromise to \$1,200, but no response from the IRS is indicated)

SOR 1.j. - By far the largest and most serious debt is that for child support. I have considered the unusual nature of Applicant's marriage and divorce, his relationship with his children, and the court-ordered child support. It is basic to administrative courts that we are required to accept the official acts of other agencies. I note that the SOR cites a debt of \$103,000. While Applicant has been making child support payments since 2000, the amount currently owing has increased to \$107, 676.12 (AX O - IRS documents). This means that applicant is further in arrearage than he was five years ago. I have considered Applicant's explanations for this condition, but the fact remains that the debt continues to be huge and delinquent many years after it was first incurred. Applicant claims his poor finances were poor for a long period, but there is no evidence he returned to court to seek a reduction in child support based on insufficient income or did anything else to resolve the situation.

### Disqualifying and Mitigating Conditions

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:

None that are applicable under the facts of this case. While MC 3 (conditions largely beyond a person's control) may be

applicable as to the medical-related debts, no such connection is apparent as to the other and larger debts. In his sworn statement to the Defense Security Service, dated August 7, 2003, Applicant stated that when his wife (ex-wife) left him, she took the children. He stopped paying child support because he "did not think it fair" for him to pay under these circumstances. Then he began earning less money, was unable to catch up, and finally stopped paying altogether (Tr at GX 2). This record does not exactly suggest the exercise of good judgment and reliability.

I have carefully considered the favorable comments/evidence from others who know him, but none of their praise diminishes the negative impact of his long term financial problems and misconduct. In the year that must pass before Applicant can reapply for a security clearance, he should take the opportunity to further resolve his delinquent debts and achieve a level of financial rehabilitation that would make him eligible for access to the nation's secrets.

### **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. For the Applicant

Subparagraph 1.b. Against 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

Subparagraph 1.h. Against the Applicant

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. 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