

KEYWORD: Financial, Personal Conduct

DIGEST: This 51-year-old engineer has a history of significant financial irresponsibility extending to the present day. He shows little understanding of the negative impact his debt history has on his security clearance eligibility. He lied on his security clearance application by deliberately omitting his delinquent debts. No mitigation has been shown. Clearance is denied.

CASENO: 03-22889.h1

DATE: 06/20/2005

DATE: June 20, 2005

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In Re:

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SSN:-----

Applicant for Security Clearance

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ISCR Case No. 03-22889

**DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

This 51-year-old engineer has a history of significant financial irresponsibility extending to the present day. He shows little understanding of the negative impact his debt history has on his security clearance eligibility. He lied on his security clearance application by deliberately omitting his delinquent debts. No mitigation has been shown. Clearance is denied.

### **STATEMENT OF THE CASE**

On January 14, 2005, 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 12, 2005, 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 March 14, 2005. A Notice of Hearing was issued on April 7, 2005, setting the matter for May 3, 2005. At the hearing, the Government introduced eight exhibits (Government's Exhibits (GX) 1-8). Applicant testified and introduced two exhibits (Applicant's Exhibits (AX) A and B. The transcript was received at DOHA on May 18, 2005.

## FINDINGS OF FACT

Applicant is a 51-year-old Senior Engineer for a defense contractor (GX 1). The January 14, 2005 SOR contains 10 allegations (1.a. - 1.j.) under Guideline F (Financial Considerations) and two allegations (2.a. and 2.b.) under Guideline E (Personal Conduct). In his February 15, 2005 response to the SOR, Applicant admits allegations 1.c., 1.d., 1.e., 1.f., 1.i., 2.a., and 2.b. and denies allegations 1.a., 1.b., 1.g., 1.h., and 1.j. Some of his answers contain explanations and/or comments. The specific admissions are accepted and incorporated herein as Findings of Fact.

Based on the totality of the record, I make the following additional Findings of Fact:

Guideline F (Financial Considerations) - As alleged in the SOR, Applicant owes the following debts that are delinquent, past due, charged off, referred for collection, or were the basis for a lien issued against Applicant:

1.a. - Internal Revenue Service (IRS) - a tax lien for Tax Year (TY) 2002 for \$7,515.00. Applicant claims this debt was paid off when he refinanced his house (Response to SOR). IRS documents prepared in April 28, 2005, corroborate this claim that *this debt has been satisfied* (AX A; at page 3 and Tr at 17 - 19);

1.b. - Credit Service B for \$501.00. Applicant disputes this debt, because of what he believes to be "very poor quality work" (*Id.* and Tr at 20);

1.c. - Dental Collection Agency C for \$618.00;

1.d. - Collection Agency D for \$95.00;

1.e. - Collection Agency E for \$233.00;

1.f. - Collection Agency F for \$1,889.00.

Applicant intends to repay these last four debts, 1.c. - 1.f. (Tr at 21 -23). They have not been paid to date only because they had the "lowest priority" in paying off debts (Tr at 32). He has the money to pay the debts, but has chosen instead to make house repairs (Tr at 33). He currently has five credit cards, one of two of which are "currently past due," and "most [of the cards are] close or at their maximum" (Tr at 35). As of the hearing, he had no money in his savings account and perhaps \$400 in his checking account (Tr at 39). He intends to resolve his current financial problems within the "next two to three years" (Tr at 46).

1.g. - IRS for \$42,352.00 for Tax Years 1998, 1999, and 2000. Applicant claims this debt was satisfied after his home was refinanced in 2003. He also claims the tax lien cited in SOR 1.a. was part of this debt and not a separate obligation (*Id.*). IRS documents prepared in April 28, 2005, corroborate his claim that *this debt has been satisfied* (AX A; at page 8)

1.h. - County Treasurers Office H for \$2,854.00 (delinquent property taxes for TY 2002). Applicant claims this tax debt was paid off when his house was refinanced in June 2003 (*Id.*). IRS documents prepared in April 28, 2005, corroborate his claim that *this debt has been satisfied* (AX A; at page 7).

1.i. - Applicant filed a Chapter 7 Bankruptcy petition in October 1994, citing assets of \$236,00.00 and debts of \$202,784.00. In the context of the entire record, I find that this single bankruptcy 11 years ago has no current security significance.

1.j. - Applicant was financially overextended according to his Personal Financial Statement (PFS) of April 14, 2003, which showed a negative monthly remainder. A recent PFS attached to his February 12, 2005 Response to the SOR show as positive monthly remainder of \$315.00 (*Id.*). In addition, recent documents show that Applicant has approximately \$200,000 equity in his house (AX B).

Guideline E (Personal Conduct) -

2.a. - Applicant falsified material facts on his Security Clearance Application (SF 86) of January 30, 2001, when he replied to Question "28 a. **In the past seven years, have you been over 180 days delinquent on any debt(s)**" by stating "No." He intentionally omitted his delinquent and bad debts because he "did not want [his] employer to find out this information." He "admit[s] making this statement" (*Id.*)

2.b. - Applicant also falsified material facts on his Security Clearance Application (SF 86) of January 30, 2001, when he replied to Question "28 b. Are you currently over 90 days delinquent on any debt(s)," by stating "No." He intentionally omitted his delinquent and bad debts because he "did not want [his] employer to find out this information." He "admit[s] making this statement" (*Id.*).

Based on his hearing testimony, I find that Applicant admits a "lapse of judgment," and "it was just poor judgment at the time." Applicant was seeking to avoid "problems with [his] employer" (Tr at 27, 28). In addition, he "just did not want to go through a big rigamoroll with [his] employer over that" (Tr at 39) and "did not want to risk [his] employment or his employment opportunities and other things by going into this" (Tr at 40). He *did know* he had delinquent debts when he answered "No" to Questions 28.a. and 28.b. on his SF 86. The two falsifications were clearly deliberate and made with the intention to deceive.

Applicant has worked in the defense field since 1976 and has held a security clearance since 1977. No violations of security regulations are alleged. He has been married since 1989 and has two eleven year-old daughters (Tr at 31)

### **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, establishes the former existence of all of delinquent debts in the amounts cited in the SOR. The remaining issue is whether Applicant has demonstrated adequate mitigation and/or extenuation of the Government's financial concerns

For the following reasons, and despite significant improvements, I conclude he has not done so.

### *Guideline F*

The first concern is that a person who is financially overextended is at risk of having to engage in illegal acts to generate funds. I do not find this concern to be applicable since Applicant has paid off the majority of his past due tax and consumer debts. The second concern is that the manner in which an applicant amasses delinquent debt *and* resolves or does not resolve those debts may show poor judgment, reliability, and untrustworthiness to a degree that makes the person ineligible to hold a security clearance. This concern I find to be applicable, based on Applicant's conduct and statements, as discussed above under Findings of Fact.

Despite the fact that he has the funds available to pay the significantly past due debts cited in SOR 1.c., 1.d, 1.e., and 1.f., he has deliberately chose not to do so. Instead, he has elected to use the money to make home repairs and to take another two or three years before he pays off the debts. While this obviously seemed a reasonable choice to him, the fact that he continues to act ths way after learning of the Government's concerns and, indeed, repeated it at the hearing, raises questions about his judgment. He is again falling behind financially, to the degree that the five credit cards he currently has are all at their credit limit or close to it. At least two of the credit card accounts are delinquent. Overall, the record compels the conclusion that Applicant has not demonstrated established financial rehabilitation.

## Disqualifying Conditions

DC (1) a history of not meeting financial obligations and DC (3) inability or unwillingness to satisfy debts are applicable. Of the parallel mitigating condition, only MC 6 is applicable, but only to a degree, since Applicant's payment of the largest debts appears to be a requirement of the home refinancing process, and not of his independent choice. At the same time, the questionable financial behavior is recent (MC 1); cannot be considered to be an isolated incident (MC 3); there is no indication that the problems have been resolved or are currently under control (MC 4). My overall conclusion is that Applicant continues to exercise unacceptable financial judgment.

### *Guideline E*

The concern here is that conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate the person may not properly safeguard classified information. Applicant admits that he knowingly falsified his answers to two financial questions, 28.a. and 28.b., on his January 31, 2001 security clearance application SF 86. Applicant's explanations show that he intended to deceive both his employer and the Government, and hoped that no one would notice the delinquent debts.

Such lies about material facts go to the heart of the security clearance adjudication process. If Applicant cannot be trusted to tell the truth in his security clearance application, there is no basis for concluding that he can be trusted to protect classified information. None of his explanations suggest he understands the significance of his falsifications and none are in any way exculpatory.

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. In the year that must pass before he can reapply for a security clearance, Applicant will have the opportunity to finally resolve his delinquent debts and to show that he understands the negative impact of his falsifications to the degree that he can be relied upon not to repeat his misconduct.

## **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. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. For the Applicant

Subparagraph 1.h. For the Applicant

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. Against the Applicant

**Guideline E (Personal Conduct) Against the Applicant**

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. 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**