

KEYWORD: Financial Considerations

DIGEST: This 58-year-old project coordinator has a history of financial irresponsibility beginning in the late 1980s and continuing to the present day. He received bankruptcy protection in 1990 (Chapter 13) and again in 1998 (Chapter 7), and he again owes massive delinquent debts on at least 41 separate accounts. Much of the debt load was incurred for serious medical reasons, but he has done very little to resolve his current debt load. He is only recently making any substantive efforts toward resolving his delinquent debts and demonstrating financial rehabilitation. No mitigation has been shown. Clearance is denied.

CASENO: 03-24853.h1

DATE: 08/02/2005

DATE: August 2, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-24853

**DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

**APPEARANCES**

**FOR GOVERNMENT**

Edward Loughran, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

This 58-year-old project coordinator has a history of financial irresponsibility beginning in the late 1980s and continuing to the present day. He received bankruptcy protection in 1990 (Chapter 13) and again in 1998 (Chapter 7), and he again owes massive delinquent debts on at least 41 separate accounts. Much of the debt load was incurred for serious medical reasons, but he has done very little to resolve his current debt load. He is only recently making any substantive efforts toward resolving his delinquent debts and demonstrating financial rehabilitation. 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 27, 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 case was assigned to me on April 5, 2005. A Notice of Hearing was issued on May 6, 2005, setting the hearing for May 25, 2005. At the hearing, the Government offered nine exhibits (Government Exhibits (GX) 1 - 9). Applicant testified and offered 13 exhibits (Applicant's Exhibits (AX) A - M).

The final transcript was received by DOHA on June 10, 2005.

### **FINDINGS OF FACT**

#### Guideline F (Financial Considerations)

Applicant is a 42-year-old employee of a defense contractor (Response to FORM). The December 31, 2004 SOR contains 44 allegations under Guideline F (Financial Considerations). In his response to the SOR, Applicant *admits* all of the allegations, most with the additional words "with mitigation" and with some explanation. The admitted allegation is accepted and incorporated herein as Findings of Fact.

Based on the entire record, I also make the following Findings of Fact:

#### Bankruptcies

1.a. - Chapter 13, filed in November 1989, and closed in January 1990. Applicant's attorney filed the wrong paperwork, so the case was closed and the lawyer filed to correct paperwork, as cited in 1.b.

1.b. - Chapter 13, filed in February 1990, and closed in October 1994.

1.c. - Chapter 7, filed on March 6, 1998. The covered debts were discharged on June 22, 1998.

As of the issuance of the SOR, Applicant had the following delinquent, past due, written off and/or referred for collection debts:

1.d. - Grocery Store D, \$571.00. Applicant or his wife wrote checks to Grocery Store D that were dishonored because of insufficient funds (Tr at 52). As of the hearing, this debt remained open and was "on the list of things to be caught up" (Tr at 52). A payment of \$250 has been made on this debt, reducing the amount owed to \$321.44 (AX Q). This is a substantial reduction.

1.e. - Hospital E, \$1,728.00. The amount owing, originally about \$1,728.18, is now about \$1,100.46. Applicant's wife still receives care at the creditor hospital and the charges are added to this account (Tr at 52). Applicant has submitted a document (AX W), dated June 7, 2005, showing a recent made a payment of \$100.00 and a second payment of \$100.00 due on June 29, 2005, with a balance due of \$1,100.46. This one of the major medical debts that "we've started to address with keeping regular payments going to them and straightening them out." I find substantial improvement in this debt

1.f. - Laboratory F, \$57.00.

1.g. - Credit Bureau G, \$85.00.

1.h. - Medical Debt H, \$2,333.00

1.i. - Credit Card I, \$151.00. This debt was paid off as of May 20, 2005 (AX S).

1.j. - Emergency Room JK, \$36.00.

1.k. - Emergency Room JK, \$34.00.

1.l. - Medical Group L, \$392.64.

1.m. - Collection Agency M, acting for Telephone Company M, \$582.00. This was paid off as of May 31, 2005 (AX O)

1.n. - Neurology Debt, \$63.00. This debt was paid off as of June 3, 2005 (AX U).

1.o. - Vision Debt, \$295.90.

1.p. - Doctor P, \$131.24.

1.q. - Health Care Debt Q, \$553.71.

1.r. - Ortho Debt, \$118.61.

1.s. - Therapy Debt S, \$346.16.

1.t. - Doctor T, \$47.33.

1.u. - Imaging Center U, \$123.78.

1.v. - Imaging center V, \$91.69.

1.w. - Doctor W, \$1,699.30.

1.x. - Doctor X, \$270.66.

- 1.y. - Medical Group Y, \$199.00.
- 1.z. - Urology Debt, \$122.37.
- 1.aa. - Doctor AA, \$137.31.
- 1.bb. - Surgical Center BB, \$78.60.
- 1.cc. - Hospital CC, \$66.22. This debt was paid off as of May 26, 2005 (AX T).
- 1.dd. - Diagnostic center DD, \$120.24.
- 1.ee. - Laboratory EE, \$313.30.
- 1.ff. - Doctor FF, \$23.23.
- 1.gg. - Doctor GG, \$62.18.
- 1.hh. - Doctor HH, \$90.22.
- 1.ii. - Imaging Center II, \$13.74.
- 1.jj. - Health Carte Group JJ, \$13.74.
- 1.kk. - Hospital KK, \$17.60.
- 1.ll. - Health Institute LL, \$251.48.
- 1.mm. - Medical Group MM, \$136.16. This debt has since grown to \$190.82, including penalties and/or interest, on which Applicant made a payment of \$40.82 on June 22, 2005. 1.nn. - Laboratory NN, \$817.61. Paid off as of May 25, 2005 (AX P).
- 1.oo. - Laboratory OO, \$120.24.
- 1.pp. - Medical Debt PP, \$600.00.
- 1.qq. - Medical Debt QQ, \$19.44.
- 1.rr. - Medical Center RR, \$122.49.

Applicant has submitted a document (AX R) from a creditor whose name and/or identifying account numbers and amounts *do not* appear in the SOR, but which does appear in one of the credit bureau reports (GX 4 at page 4). It shows a debt of \$2,723.00 to have been paid in full as of May 27, 2005.

Applicant submitted a second document (AX V) from a bank. It cites an account three months past due as of June 2005, showing a recent payment of \$212.95 and a balance of \$3,163.07. Under DOHA guidelines, I cannot consider either debt as a separate allegation, because they are not cited in the SOR, but I do consider the evidence as part of my overall evaluation of the disqualifying and mitigating conditions applicable to the collective allegations stated in the SOR.

Applicant has submitted a letter from his supervisor describing him as an "exceptionally loyal and dedicated employee" (AX N). His work evaluations (AX A) are consistently positive in considering Applicant to be a valuable employee.

## 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**

Applicant's response to the SOR states that the delinquent debts cited in SOR 1.d. - 1.rr are related to family medical problems and the hospitalization of Applicant (twice) (Tr at 50 - 53); his wife (four times) (She has had surgery for ovarian and the cervical cancer and is on permanent disability) (Tr at 36); and his 26-year-old son (twice). Each period

of hospitalization resulted in a substantial loss of earnings. Applicant counts 13 times between 184 and the present that one of them has been hospitalized (Tr at 36). His son has been on disability since about 1998 and is not able to work, so Applicant is paying all of the son's medical bills not covered by social security. Applicant's serious medical problems began in about 1983 and his wife's in 1984.

1.a., 1.b., and 1.c. - The Chapter 13 bankruptcy was filed in 1990 to allow him some leeway in repaying his delinquent debts, which he did by 1994. The discharge in his Chapter 7 bankruptcy filed in 1998 was aimed at his continuing medical and hospital related debts. He had wanted to file another Chapter 13 and pay off the new debts and those not covered by the first bankruptcy but was advised against it because of a lack of sufficient funds (Tr at 35). I conclude the circumstances of the two bankruptcies are still of security significance, since they mark the beginning of a long period of financial instability that continues to the present day.

Applicant has attempted to play "catch up" and has documented payments to a number of his creditors (Tr at 36). During the last 20 years, he has obtained only one new loan, to purchase a need automobile (Tr at 37). He and his wife live frugally on what income they have (Tr at 39-41).

However, the status of the delinquent debts cited in the SOR is substantially unchanged, as follows:

Some of the delinquent debts have been paid off or substantially reduced. These include: 1.d., 1.e. 1.i., 1.o., 1.cc (payments are being made as part of a debt consolidation plan, along with 1.e.).

1.f. - for \$57.00 is still owing (Tr at 53), as is 1.g. - for \$85.00

1.h - Applicant claims this is paid off, but that is not documented (Tr at 54 and GX 5)

1.j.- \$36 is still owing, as is 1.k. (\$34.00) and 1.l (\$392.64).

1.n. - Applicant claims this debt were paid of on the day of the hearing, but this is undocumented) (Tr at 54, 55).



1.o. -1.z. - these debts are still open and owing (Tr at 56).

1.aa - 1.mm., except for 1.cc. - are all still open and owing (Tr at 57),

All present ongoing debts that are not cited in the SOR are current (Tr at 57). I have carefully considered the unique fact situation in this case. The three bankruptcy allegations actually pertain to two bankruptcy cases, the Chapter 13 in 1989/1990 and the Chapter 7 in 1998. The evidence shows that both resulted primarily from medical/hospital debts caused by continuing medical problems involving Applicant, his wife, and his son. Bankruptcy is a legal remedy under Federal law, in which petitions must be evaluated and granted or denied by a Bankruptcy Judge. Bankruptcy becomes an issue in security clearance adjudications only when the circumstances suggest an abuse of process; i.e., when debts are incurred with the intent from the beginning to eventually file for bankruptcy protection, or when multiple filings show a continuing plan to avoid responsibility to pay legitimate debts.

In the present case, I find no such abuse of process. The first bankruptcy was under Chapter 13, in which Applicant obtained only more time to pay off the covered debts. The second bankruptcy was under Chapter 7, which vacates all covered debts, but Applicant states he wanted it to be another Chapter 13, but was informed he did not have enough income to satisfy legal requirements. The filings of the bankruptcies do not, by themselves, suggest questionable judgment on Applicant's part. However, as part of a long and continuing period of an inability to satisfy debts, they remain of security significance.

The 41 delinquent debts alleged under 1.d. - 1.nn are another story. From a totality of the evidence, it is clear that Applicant has about as many delinquent debts (some paid off and others incurred) as he had in 1998, and before that in 1989/1990, the dates of the two bankruptcies. Applicant is in a difficult position. He has made some efforts to resolve his overall debt load, but only as to a few of the smaller debts, six out of 41. In addition, most of the payments made have been recent, which although a positive step, lacks the same effect as payments not made under the pressure of the ongoing adjudication.

### Disqualifying and Mitigating Conditions

Under Guideline F (Financial Considerations), Disqualifying Condition (DC) 1 (a history of not meeting financial obligations) and 3 (*inability* or unwillingness to satisfy debts) are both applicable. At the same time, the evidence does not support any of the possible Mitigating Conditions since the financial behavior remains recent (MC 1); it is not an isolated incident (MC 2); there is as yet no evidence that the problem is being resolved or is under control (MC 4); and Applicant has not instituted a good-faith effort to repay overdue creditors or otherwise resolve the debts (MC 6).

In summary, Applicant's overall poor financial situation, it is a case of too little, too late to establish that he has made any substantial steps on the path to financial rehabilitation. Consequently, the record does not demonstrate that Applicant currently possesses the good judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets. In summary, Applicant has not adequately mitigated the Government's concerns. In the year that must pass before he can reapply for a security clearance, he will have the opportunity to demonstrate financial rehabilitation by resolving more of the 41 alleged 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. - 1.d. Against the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. - 1.h. Against the Applicant

Subparagraph 1.i. For the Applicant

Subparagraph 1.j. - 1.bb. Against the Applicant

Subparagraph 1.cc. For the Applicant

Subparagraph 1.dd. - 1.rr. 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**