

DATE: December 4, 2003

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-32199

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 56-year-old engineer has had substantial financial problems since 1993, in which year he filed for bankruptcy protection. He has subsequently amassed significant new debts and had his home foreclosed on. He has only recently paid off some of the smaller debts, but is still delinquent on others, including the largest debts, and totaling more than \$50,000. His efforts at mitigation by paying off some debts have occurred only recently and cover only a small percentage of the total owed. He has not yet demonstrated his financial integrity. His explanations do not constitute adequate mitigation. Clearance is denied.

STATEMENT OF THE CASE

On February 17, 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 March 27, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have a hearing before a DOHA Administrative Judge. The case was assigned to another Administrative Judge, but was reassigned to me on July 14, 2003, because of caseload considerations. A Notice of Hearing was issued on July 30, 2003, and the hearing was conducted on August 22, 2003. The Government did not call any witnesses, but offered six exhibits. Without objection, these were admitted as Government's exhibits (GX) 1- 6. Applicant testified and called six additional witnesses, but did not offer any exhibits.

At Applicant's request the record was kept open for a short period to allow Applicant to obtain and submit documents he believed would be helpful to his case. On September 1, 2003, he timely submitted a batch of documents to me through Department Counsel. These have been marked collectively as Applicant's Exhibit (AX) A. Department Counsel prepared a cover sheet describing the individual document(s) and assigning numbers to them, 1-7, along with the basis for her objection to some of them. I have marked the documents for identification as AX A1-A7. As to AX A4, after considering the Government's objection, I am admitting this document for the limited purpose of documenting Applicant's contention that he mailed payments to the cited creditors on August 23, 2003, but not as evidence that the creditors actually received such payments or credited them to Applicant's account. Likewise, all of the letters to creditors and a credit reporting company found in AX A5-A7 are also found to be relevant and material for the same limited purpose. All of Applicant's exhibits are therefore admitted into evidence as marked.

On September 12, 2003, Applicant submitted additional documents relating to payments made by Applicant to creditors, including a bank statement. Department Counsel objected, on the ground that the submission was untimely, since the record closed on September 5, 2003. After considering Department Counsel's objection, I am admitting the documents as AX B, collectively. These documents are evidence of the completion of Applicant's efforts to make payments, as shown in AX A. They are therefore highly relevant, material, and probative to the core issues in this case. In fairness to all concerned, and to allow the development of a full and complete record, as called for by the Directive, at E3.1.19 and E3.1.10, I deem it appropriate to waive the defect of the exhibit being submitted one week late. The transcript was received at DOHA on September 2, 2003.

FINDINGS OF FACT

Applicant is a 56-year-old engineer for a major defense contractor. The SOR contains 13 allegations under Guideline F (Financial Considerations). In his response, Applicant *admits* the existence of the Chapter 7 bankruptcy in 1993 (SOR 1.a.); the 11 delinquent debts cited in SOR 1.b-1.l; and the foreclosure of his home, as alleged in SOR 1.m. These admissions are accepted and deemed to be Findings of Fact. Applicant added an explanation as to all 11 debt allegations that he was either presently working with specific creditors, or that he "will be" working with other creditors to make payments toward paying off the debts in question.

After considering the totality of the evidence derived from Applicant's testimony and all exhibits, I make the following additional FINDINGS OF FACT as to each SOR allegation:

Guideline F (Financial Considerations)

1.a. - Applicant filed a Chapter 7 bankruptcy petition in 1993.

According to Applicant, on August 23 and 25, 2003, he sent letters, with checks, to the 11 creditors cited in SOR 1.b. - 1.l. (AX A5), which he also noted on AX A4. He has documented that some, but not all, of the cited creditors have received and cashed the checks he sent them, as cited below.

1.b. - Applicant sent a letter and a money order for \$50 to the named creditor, but it was returned with no forwarding address. On September 12, 2003, Applicant followed up by sending letters to seven other locations for the creditor in the same state. At this point, the record shows a delinquent debt of \$5,241 still outstanding.

1.c. - This delinquent debt of \$44 has been paid off, as of September 2, 2003. (AX B at pages 1-4).

1.d. - Applicant claims he sent a check for \$26 to the named creditor (AX B at page 2), but has not documented its receipt by the creditor (AX B at page 3). This debt remains outstanding.

1.e. Applicant sent a \$50 money order to the Creditor named in SOR 1.e., on a debt of \$7,448. The money order was returned by the Creditors Collection Support Department, with an explanation that Applicant's name could not be "cross-match[ed]" with any account. (AX B at pages 1-4). Based on this record, I find that the delinquent debt of \$7,448 remains outstanding

- 1.f. - This delinquent debt of \$822 remains outstanding, in the absence of any documentation to the contrary.
- 1.g. - This delinquent debt of \$132 has been paid off, as of September 4, 2003 (AX B at pages 1-3).
- 1.h. - This delinquent debt of \$102 remains outstanding. It has not been documented as having been paid off (*see*, AX B at pages 2, 3).
- 1.i. - This delinquent debt of \$37,905, for past due child support payments remains outstanding. Applicant's children are now over 18 and the amount owed has stopped growing, but he has not made any payments toward what he owes.
- 1.j. - This delinquent debt of \$35 has been paid off, as of September 10, 2003. (AX B at pages 1-4).
- 1.k. - This delinquent debt of \$118 has been paid off, as of September 2, 2003. (AX B at pages 1-3).
- 1.l. - This delinquent debt of \$152 has been paid off, as of August 28, 2003 (Ax B at pages 1-3).
- 1.m. - The cited foreclosure of Applicant's home occurred as alleged.

As of August 23, 2002, Applicant had 10 delinquent accounts that had been referred for collection or charged off, totaling \$15,158; one bankruptcy petition filed in 1993, covering \$25,200 in debts; and \$111,430 in a mortgage balance on a foreclosure. The credit report showed a "reported past due" amount of \$47,878. (GX 2). At present, the record shows that Applicant is delinquent on five consumer debts totaling \$13,839 and \$37,905 in delinquent child support payments, for a combined total of \$51,744.

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.

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to this case:

GUIDELINE F (Financial Conduct)

The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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:

None that are applicable under the facts of this case.

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 Directive's "whole person" concept, DOHA Administrative Judges are 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.

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 or work life, 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 an applicant's admissions or by other evidence) and establishes 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

I have considered the evidence in light of the appropriate legal standards and factors, and have assessed Applicant's credibility based on the entire record. I conclude the totality of the evidence establishes a *prima facie* or initial case as to all SOR allegations, and the proven misconduct in turn establishes a nexus or connection with Applicant's security clearance eligibility. The issue remains however as to whether Applicant had established adequate mitigation of the Government's financial concerns. For the reasons stated below, I conclude that he has not done so.

I have carefully considered Applicant's testimony, that of his witnesses, and his work-related documentation. Prior to 1993, his divorce, and his wife's alleged financial misconduct, he had good credit and no significant financial problems. (GX 3). These problems resulted in his 1993 Chapter 7 bankruptcy filing. The 2002 credit report (GX 4) shows a "discharge" of the bankruptcy but Applicant's sworn statement to the Defense Security Service (DSS) says that the petition was dismissed, that the Bankruptcy Judge ordered him to repay all of his debts, and that he did so by garnishment of his wages, after which time he was debt-free (GX 3 at page 2).

In any case, the debts that are the subject of this adjudication arose since 1993. I have considered Applicant's statements about his personal, financial, and employment-related problems. While the debts appear to have been incurred, at least in part, because of problems substantially beyond his control, his failure to repay or otherwise resolve those problems has continued to the present day. The most recent credit reports from May 27, 2003 (GX 4, GX 5, and GX 6) show the continuing negative status of the debts and other allegations in the SOR. The 1993 Bankruptcy and the home foreclosure (SOR 1.a. and 1.m.), when considered in the context of totality of the evidence, are just part of his long and varied history of questionable financial judgment, reliability, and trustworthiness.

I have considered the favorable testimony from Applicant's five witnesses. The gist of this testimony is that Applicant is a "very good employee," cooperative and friendly, a "very respectful person and a hard worker," professional and dedicated, and having high work ethics. (Tr at 57-73). The favorable comments provided by Applicant's colleagues are certainly a positive factor, but they are mostly provided by individuals who have known Applicant for only a short time and are not really probative on the issue of Applicant's financial integrity. Overall, his financial conduct over a long period contains too many examples of recent questionable judgment, unreliability, and untrustworthiness to permit a finding that he is currently eligible for access to the nation's secrets.

Disqualifying Conditions 1 (history of not meeting financial obligations) and 3 (inability or unwillingness to satisfy debts) are clearly applicable but none of the possible mitigating conditions have been established by the record. The problems are still current (MC 1); they are not an isolated incident (MC2); while the incurring of much of the debt may have occurred in a period of difficulties over which he had little control, the same cannot be for the recent period, during which he has been employed but failed to attempt a resolution of the debts until recently, and under the pressure of the current adjudication. He has recently started down the right path, but it is still too little and too late to be considered as proof of his financial rehabilitation. (MC 3 and 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 l.a. Against the Applicant

Subparagraph l.b. Against the Applicant

Subparagraph l.c. For the Applicant

Subparagraph l.d. Against the Applicant

Subparagraph l.e. Against the Applicant

Subparagraph l.f. Against the Applicant

Subparagraph l.g. For the Applicant

Subparagraph l.h. For the Applicant

Subparagraph l.i. Against the Applicant

Subparagraph l.a. For the Applicant

Subparagraph l.k. For the Applicant

Subparagraph l.l. For the Applicant

Subparagraph l.m. 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