

DATE: March 8, 2005

In Re:

SSN -----

Applicant for Security Clearance

ISCR Case No. 02-32464

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 38-year-old mechanic 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 December 31, 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 January 25, 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 July 28, 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 8, 2004. The Applicant submitted timely additional information. The matter was assigned to me for resolution on October 13, 2004.

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 two allegations under Guideline F (Financial Considerations). In his October 15, 2003 response to the SOR,

Applicant *denies* the factual basis of allegation 1.a. and admits the factual basis of allegation 1.b. Applicant adds explanations and arguments to his answers. The admitted allegation is accepted and incorporated herein as a Finding of Fact.

The SOR, as originally issued on December 31, 2003, alleged at 1.a. - that "You were indebted to [Lender X] in the approximate amount of \$143,000 on an account that was delinquent and in foreclosure. As of July 28, 2003, this account had not been paid; and 1.b. - "You are indebted to Dr. Y (DDS) in the approximate amount of \$1,200 for a delinquent debt that had been charged off. As of July 28, 2004, this debt had not been paid."

After receiving Applicant's January 25, 2004 response, Department Counsel moved to amend the SOR, to conform to the evidence presented by Applicant. The Motion to Amend Statement of Reasons is contained in Section II. Preliminary Matters of the FORM. After evaluating the entire record at that time, I conclude that Department Counsel's request is reasonable and not a surprise to Applicant since the new allegations are based on information provided by him. I note that Applicant was advised of his right to object to the proposed amendment and did not do so in his response to the FORM, although he did respond to the proposed new language.

SOR 1.a. -is hereby amended to read as follows:

On or about June 5, 2000, a Notice of Lis Pendens was filed against you in the Circuit Court of the 1st Judicial District of [State A, County B], for default of payment of your mortgage. On or about August 2000, the guarantor of your home, [a federal agency] paid off the amount you owed on your mortgage. On or about September 2002, the [same Federal agency] purchased your home. You owe the [Federal agency] approximately \$143,899 for a judgment entered against you in [State A, County B] on or about September 2002.

[1.b. - remains the same]

SOR 2.a., 2.b., and 2.c., under Guideline E (Personal Conduct), are added as follows:

2.a. - You falsified material facts on a Security Clearance Application, SF 86, executed by you under date January 24, 2002, in response to Question 40. Public Record Civil Court Actions. "In the past seven years, have you been a party to any public record civil court actions not listed elsewhere on this form?" You deliberately failed to disclose that in June 2000 foreclosure had been initiated against you when a Notice of Lis Pendens was filed against you in [State A, County B] for default of payment of your mortgage.

2.b. - You falsified material facts on a Security Clearance Application, SF 86, executed by you under date January 24, 2002, in response to Question 39. Your Financial Delinquencies - 90 Days. "Are you currently over 90 days delinquent on any debt(s)?" You deliberately failed to disclose that you were at least 90 days delinquent on the following creditors: [Companies C and D, Lender A, and Dr. B].

2.c. - You falsified material facts on a Security Clearance Application, SF 86, executed by you under date January 24, 2002, in response to Question 38. Your Financial Delinquencies - 180 Days. "In the past seven years, have you been over 180 days delinquent on any debt(s)?" You deliberately failed to disclose that between approximately October 1999 and July 2000, you were delinquent on your mortgage payments to [Mortgage Company E].

I deem Applicant's responses to the SOR, as amended, to be denials.

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 latest of which is Applicant's response to the FORM.

Guideline F (Financial Considerations)

After a thorough review of the Government's documentation in support of the SOR, and Applicant's responses to the SOR and FORM, I conclude that the existence of the alleged delinquent debts is shown in a number of supporting documents, including GX 5, GX 6, GX 9, and GX 10. I have carefully evaluated Applicant's various statements, beginning with his two SF 86s (GX 4 and GX 11), his response to the SOR (GX 2), his statements to an agent of the Defense Security Service (DSS) (GX 7 and GX 12), his Response to Financial Interrogatories (GX 8), and his response to the FORM. I understand Applicant's explanations, but they are not persuasive and are not accompanied by any documentation establishing that any or all of the debts were incorrectly stated as Applicant's, that they have been voided in some manner, they have been paid off or otherwise satisfied, or resolved in some manner that does not indicate questionable judgment on Applicant's part.

Applicant did understand the concerns of the finance-related questions on his recent SF 86. He did report a wage garnishment in 1995 (GX 4 at Question 34). Beyond that solitary admission, Applicant denied the other debts, claiming they had all been satisfied, except for the mortgage on his home, which was in foreclosure, but which he hoped to save from foreclosure by refinancing it with another bank (GX 7). In addition, he claimed that he failed to disclose these debts on the SF 86 (Questions 38 and 39 would be the appropriate places) because his wife controlled the family finances and he was unaware that the debts were delinquent, including the mortgage (*Id.*). Considering the nature of the debts and the time period involved, this claim is not persuasive, and is made even less so by his use of a similar excuse for his failure to report delinquent debts ten years earlier on his 1992 SF86 (GX 12).

Applicant's continuing financial culpability (either intentional or grossly negligent) is further shown by his failure to take the opportunity given him by the Financial Interrogatories he received in August 2003 (GX 8). On this document, he claimed that the debts cited by DSS had been satisfied, including the mortgage on his home which, he explained, had been foreclosed on by the lender and turned over to the Government agency that guaranteed it (*Id.*). However, Applicant's submissions include a recent credit bureau report (CBR) of July 28, 2003, in which the delinquent debts of \$1,200 to Dr. A and \$143,000 to Lender E were still reported as delinquent (GX 8). In 2004, Department Counsel asked DSS to look further into the mortgage debt. The DSS investigation showed that while the Federal Agency had paid off the mortgage lender, that meant only that Applicant now owed the \$143,000 debt to the Federal Agency that wound up owning the loan.

I have carefully reviewed Applicant's response to the FORM. He states that the Federal Agency has now sold the home to another party. Attachment A to his response appears to confirm the sale of the home in September 2003 for \$125,600, which was about \$17,500 less the debt as of that date, now grown to about \$42,760.73 (Attachment B). Applicant appears to be claiming that Attachment B means the debt belonged only to his wife, but it does not say the debt was exclusively his wife's, and both their names are on earlier official documents (GX 5, GX 6 and GX 9). In any case, Applicant should contest the legal validity of his legal responsibility with that Federal Agency. Unless otherwise legally established to the contrary, I have no authority to question his being legally responsible, regardless of his wife's involvement with the debt.

Overall, I conclude that the two Guideline F allegations are supported by the overwhelming weight of the documentary evidence. Considering all of Applicant's explanations at face value, the reality remains that this adjudication has been going on for three years, with Applicant knowing the Government's basis concerns since the beginning and has not yet established by documentation and from sources other than himself that the Government's evidence and interpretation thereof is incorrect and that his is correct. I note that even in his September 2004 response to the FORM, he does not document that the Federal Agency is not holding him responsible for the remaining debt on the home loan and he "will be sending a letter to 3 major credit reporting repositories disputing" both the home loan debt (1.a.) and the debt to the dentist (1.b.).

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. However, 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).

As to Applicant's overall financial situation, it is a case of too little, too late to currently conclude he is on the path to financial rehabilitation.

Guideline E (Personal Conduct),

The falsifications alleged under SOR 2.a., 2.b., and 2.c., all refer to his omission of the foreclosure on his home (2.a.) and the debts alleged in SOR 2.a., 2.b., and 2.c. In the context of his overall past financial conduct, his explanations for failing to disclose the required information are not persuasive

Disqualifying Condition 2 (the deliberate omission, concealment or falsification of material facts from any personnel security questionnaire (SF 86)) is clearly applicable as is DC 5 (a pattern or history of dishonesty or rule violations). 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.

I have also considered his discussion of his military service, his having held a security clearance in the past, and his contributions to our country and given these factors some weight in evaluating Applicant. I conclude, however, that these praiseworthy parts of his life did not stop him from exercising financial irresponsibility to the point that he violated the Guidelines cited above and cannot be deemed adequate 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

Guideline E (Personal Conduct) Against the Applicant

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

Subparagraph 2.c. 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