

DATE: November 1, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-06212

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 45-year-old employee of a defense contractor has an ongoing history of 23 delinquent debts, beginning in about 2000, and totaling approximately \$15,000. He has made no substantive efforts to resolve any of the debts and has not demonstrated financial rehabilitation. Mitigation has not been established. Clearance is denied.

STATEMENT OF THE CASE

On September 21, 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 October 18, 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 April 19, 2005. 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 June 16, 2005, but no submission to the FORM has been received. The matter was assigned to me for resolution on July 7, 2005.

FINDINGS OF FACT

Applicant is a 45-year-old employee of a defense contractor. The SOR contains 23 allegations, 1.a. - 1.w., under Guideline F (Financial). Applicant admits all 23 allegations. His explanations focus on matters other than the facts and circumstances of the debts, themselves. All admitted allegations are accepted and made Findings of Fact.

After considering the totality of the evidence of record in the FORM, I make the following FINDINGS OF FACT as to

each SOR allegation, based on the contents of the FORM, including Applicant's sworn statement and his response to the SOR. No response to the FORM was submitted.

As alleged in the SOR, under:

Guideline F (Financial)

As of the issuance of the SOR, Applicant owed the approximate amounts states on the following debts that were past due, delinquent, charged off, referred for collection, or reduced to judgment:

- 1.a. - Bank A - \$1,902;
- 1.b. - Medical Debt B - \$176.00;
- 1.c. - Law Firm C - \$45.00;
- 1.d. - Credit Union D - \$410.00;
- 1.e. - Credit Union E - \$346.00;
- 1.f. - Company F - \$52.00;
- 1.g. - Law Firm G - \$52.00;
- 1.h. - Law Firm H - \$43.00;
- 1.I - Company I - \$1,374.00;
- 1.j. - Company J - \$2,039.00;
- 1.k. - Credit Union K - \$93.00;
- 1.l. - Credit Union L - \$78.00;
- 1.m. - Collection Agency M - \$43.00;
- 1.n. - Credit Union N - \$884.00;
- 1.o. - Credit Union O - \$195.00;
- 1.p. - Credit Union P - \$811.00;
- 1.q. - Credit Union Q - \$1,478.00;
- 1.r. - Credit Union - \$195.00;
- 1.s. - Credit Union S - \$144.00;
- 1.t. - Collection Agency T - \$664.00;
- 1.u. - Credit Union U - \$1,890.00;
- 1.v. - Company V - \$343.00;
- 1.w. - Collection Agency E - \$1,460.00;

These delinquent debts go back as far as the year 2000. Applicant has been aware of the Government's concerns since at

least December 2002, when he gave his sworn statement to an agent of the Defense Security Service (DSS). Applicant admits all 23 delinquent debts, which exceed \$15,000.00.

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.

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. 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.

CONCLUSIONS

Applicant is 45 years old. His financial conduct, as cited in the SOR and FORM, raises serious question about his judgment, reliability, and trustworthiness under four separate guidelines of DoD Directive 5220.6. I find all of the allegations to be supported by the Government's evidence. After carefully considering all of Applicant's explanations, I find the Applicant has not demonstrated financial rehabilitation as to the concerns expressed under Guideline F.

Financial Considerations - Applicant admitted the accuracy of all of the 23 delinquent debts, which is also established by the overall record evidence. ⁽¹⁾ None of the debts have been satisfied or otherwise resolved. On this basis, I conclude that all of the 23 delinquent debts cited in the SOR remain outstanding.

This matter was submitted to me on the written record, which ends as to substantive matters with Applicant's response to the SOR. Applicant did not respond to the FORM, which definitively stated the Government's concerns as to Applicant's financial situation.

I have carefully considered Applicant's explanations. As I understand his claims, he has been a single parent since 1991,

he has been cutting his budget, considering bankruptcy, making phone calls and contacting creditors (Item 7, which is dated October 25, 2003). There is no evidence that Applicant carried through with his efforts or that any resolution of the cited debts has occurred, including even the smallest dollar amounts.

I have also carefully considered his representation as to his military and other service to this country since at least 1980. While this could certainly be taken into consideration if Applicant had made some movement toward resolving his debts, his failure to make any substantive improvements in his situation over many years, particularly since receiving the SOR, is compelling. He has made promises as to future action that have not been carried out more than two years later. Promises can be treated as evidence but, in the absence of evidence of substantial performance, such promises are minimal and do not even come close to mitigating the evidence of the 23 long term delinquent debts cited in the SOR.

Disqualifying Conditions - (1) a history of not meeting financial obligations; and (3) inability or unwillingness to satisfy debts are applicable. However, none of the parallel Mitigating Conditions have been established by the record.

A year must pass after a final decision before Applicant can request reconsideration of his request for a DoD security clearance. During this period, Applicant will have the opportunity to address the issues stated above. As of now, however, he has not met his burden of establishing that he possesses the good judgment, reliability, and trustworthiness required of anyone seeking 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)

Subparagraph 1.a. Against 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. Against the Applicant

Subparagraph 1.h. Against the Applicant

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. Against the Applicant

Subparagraph 1.k. Against the Applicant

Subparagraph 1.l. Against the Applicant

Subparagraph 1.m. Against the Applicant

Subparagraph 1.n. Against the Applicant

Subparagraph 1.o. Against the Applicant

Subparagraph 1.p. Against the Applicant

Subparagraph 1.q. Against the Applicant

Subparagraph 1.r. Against the Applicant

Subparagraph 1.s. Against the Applicant

Subparagraph 1.t. Against the Applicant

Subparagraph 1.u. Against the Applicant

Subparagraph 1.v. Against the Applicant

Subparagraph 1.w. 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

1. Applicant has consistently admitted the delinquent debts in his security clearance application (SF 86) (Item 4), his sworn statement to DSS (Item 5), and his response to the SOR (Item 2).