

KEYWORD: Financial; Personal Conduct

DIGEST: This 32-year-old computer specialist has a history of financial irresponsibility extending to the present day. He shows little understanding of his own financial responsibilities and he intentionally omitted substantial delinquent debts from his SF 86 in 2002 and did not reveal the truth until asked by the Defense Security Service in 2004. No mitigation has been shown. Clearance is denied.

CASENO 03-08623.h1

DATE: 03/29/2005

DATE: March 29, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-08623

**DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

**FOR APPLICANT***Pro Se***SYNOPSIS**

This 32-year-old computer specialist has a history of financial irresponsibility extending to the present day. He shows little understanding of his own financial responsibilities and he intentionally omitted substantial delinquent debts from his SF 86 in 2002 and did not reveal the truth until asked by the Defense Security Service in 2004. No mitigation has been shown. Clearance is denied.

**STATEMENT OF THE CASE**

On September 23, 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 15, 2004, 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 December 8, 2004. A Notice of Hearing was issued on January 23, 2005, setting the matter for January 31, 2005. At the hearing the Government introduced four exhibits (Government Exhibits (GX) 1 - 4). Applicant testified and introduced five exhibits (Applicant's Exhibits (AX) A- E). All exhibits were admitted into evidence without objection. The transcript was received at DOHA on February 11, 2005.

## FINDINGS OF FACT

The SOR contains four allegations (1.a. - 1.d.) under Guideline F (Financial Considerations) and two allegations under Guideline E (Personal Conduct). In his response to the SOR, Applicant admits, with explanations, all of the allegations under both Guidelines. His admissions are incorporated herein as Findings of Fact.

After considering the entire record, I make the following additional Findings of Fact:

### Guideline F (Financial Considerations)

Applicant is a 32-year-old computer technician employee for a defense contractor (Response to FORM). The December 31, 2004 SOR contains four allegations under Guideline F (Financial Considerations) and two allegations under Guideline E (Personal Conduct). . 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. - 1.d. and 2.a. ans 2.b. Applicant adds explanations and arguments to his answers. The admitted allegation is accepted and incorporated herein as a Finding of Fact.

As of the issuance date of the SOR, September 23, 2004, Applicant had the following past due, delinquent, charged off, or referred for collection debts owed to the following creditors in the approximate amounts cited:

1.a. - Bank A -\$8,909; Applicant has documented payments late last year that reduced the balance due to \$7,049.63. He promises continued larger payments now that other debts have been paid off.

1.b. - Collection Agency B - \$13,326;

1.c. - University C - \$1,500;

1.d. - Bank D - \$3,887.

Applicant explains that he was working his way through school, when the company went out of business, and that he continued making payments on his debts until his funds ran out (Tr at 18-20). He was 26 at the time. I am satisfied that his financial problems were not the result of extravagant spending and that he has learned the hard lessons of financial management, easier of course when you are gainfully employed. The letters from his work suggest Applicant is likely to be employed for the foreseeable future. His recognition of the problems caused by his inability to make payments on his debts and his recent pattern of making significant inroads into reducing that debt shows he is on the road to financial rehabilitation. I conclude he can be relied upon not to fall back into the problems that gave rise to the present adjudication.

#### Guideline E (Personal Conduct)

Applicant's explanation for the false answers to Questions 38 and 39 was basically that it was an "oversight that I did not disclose all of my financial obligations. I only knew about the two accounts" cited in the SF 86, until informed by the DSS agent (Tr at 19). On cross examination, Applicant clarified that he had no financial problems before he was laid off from work, which was in about May 1999 (Tr at 21, 22 and GX 1). He used his "credit cards to survive," paid back what he could, then made only the "minimum" payment, and then became unable to pay even that (Tr at 22, 23). He was confused to a degree about the identities of his creditors because they sometimes changed names (Tr at 23)

2.a. - Applicant falsified material facts on a security clearance application (SF 86), dated November 11, 2002, in which he was required to answer the following question: "**38 Your Financial Delinquencies - 180 days** In the last seven years, have you ever been over 180 days delinquent on any debt(s)?" to which he answered "Yes," and listed a student loan debt of \$500 as delinquent, but he failed to list the delinquent debt cited in SOR 1.a. - 1.d., above;

2.b. - Applicant falsified material facts on a security clearance application (SF 86), dated November 11, 2002, in which he was required to answer the following question: "**39 Your Financial Delinquencies - 90 days** Are you currently over 90 days delinquent on any debt(s)?" to which he answered "Yes," and listed a student loan debt of \$500 and another debt of \$77 as delinquent, but he failed to list the delinquent debt cited in SOR 1.a. - 1.d., above;

Applicant is a respected employee. His company's security manager appreciates Applicant's "hard work and integrity" (AX E, undated letter from WP). A security manager who assisted Applicant in competing the SF 86 states that Applicant "has always been up front with all matters concerning his previous personal history" and has witnessed Applicant's efforts to resolve his financial problems (AX E, undated letter from LA); a systems administrator views Applicant as "conscientious and trustworthy" (AX E, undated letter from RM). There are eight other similar letters of praise from work colleagues and supervisors. All of them say that have seen the allegations in the SOR.

## 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)

After a thorough review of all of the record evidence, I conclude that the existence of the alleged delinquent debts is established by all of the Government's supporting documents, specifically GX 1, GX2, GX 3, and GX 4. I have also carefully evaluated Applicant's testimony and exhibits.

SOR 1.a. -debt of \$8,909. Applicant has documented an agreement with this creditor and three payments of \$705.04 on the debt, on October 31, 2004, November 30, 2004, and January 4, 2004, respectively, reducing the balance to about \$6,800 (AX A and Tr at 24).

SOR 1.b. - debt of \$13,326 shown on SOR, but increased to \$15,022.83 as of October 6, 2004 statement from this creditor. Applicant has documented an agreement with this creditor and

payments of \$100, \$1,412.16, \$100, and \$500 from October 2004 to January 13, 2005, reducing the balance to \$13,316.67 (AX B and Tr at 24, 25).

SOR 1.c. - debt of \$1,500 cited on the SOR. The creditor has provided a statement, dated January 25, 2005, stating that Applicant's debt to the school has been paid in full and that the change in status has been reported to a National Credit Bureau (AX C). This debt was one of at least two owed by Applicant to this educational institution; this one apparently for books and related purchases. He thought it had been consolidated into the larger student loan. The cited loan has been paid off, but the current balance on the main loan is now about \$20,000, and is current (Tr at 25, 26).

SOR 1.d. - debt of \$3,887 shown on SOR, but increased to \$4,242.86 as of October 28, 2004. The creditor agreed to accept payments of \$225 per month, beginning on October 30, 2004. Subsequent payments through January 12, 2005 reduced the balance to \$3,766.36 (AX D). He is currently making payments on this loan (Tr at 26).

Overall, Applicant's current delinquent debt load is between \$23,000 and \$24,000., and he has been making payments in varied amounts on the three delinquent accounts, as cited in 1.a., 1.b., and 1.d., above.

Disqualifying Conditions (DC) 1 (a history of not meeting financial obligations) and 3 (inability or unwillingness to satisfy debts) are applicable. As to Mitigating Conditions (MC), 1 and 2 are not applicable since the financial behavior remains recent and is not an isolated incident. MC 6 is applicable in that Applicant has "initiated a good-faith effort to repay overdue creditors or otherwise satisfy debts

Guideline E (Personal Conduct)

As noted above, Applicant did reveal at least one debt under each question. His explanation is that he revealed the debts of which he was aware, and did not disclose the others because he was not aware of them at the time he completed the SF 86. (Tr at 19, 20). He contends he learned about them from Agent W of the Defense Security Service (DSS) (Tr at 19).

Applicant's first contact with the SF 86 was when his employer asked him to complete a SF 86. He "just filled it out" (Tr at 28). It took him a "couple of days" to gather the information requested and complete the form (Tr at 29). Applicant's explanations for incorrectly answering questions 38 and 39 vary somewhat. Most telling is his admission that he knew about the delinquent debts he omitted from his answer to Question 39 (90 days), but that he simply didn't have the information to put down (Tr at 31). By this language, I understand him to mean that he knew the debts were delinquent, but was not aware of the amount owed on each one, and chose to wait until asked about them by the DSS agent (Tr at 31).

This explanation is not persuasive. Applicant could just as well have cited the debts as required by the question and given any kind of estimate, to be corrected at some later date. The SF 86 was signed on November 11, 2002, and the sworn statement to DSS was signed on March 4, 2004, some 16 months later, during which there is no evidence Applicant made any effort to correct his false information. I note Applicant's failure to respond to the DSS agent's attempts, over a period of time, to contact Applicant to set up an interview with him. This resulted in the termination of the adjudication and subsequent reopening (Tr at 33-36). Finally, I note that Applicant's initial repayments on the delinquent debts occurred only recently, late in 2004, so the weight to be given the payments is not as much as if they had been made before Applicant faced the immediate pressure of the current adjudication. I have carefully considered the letters of support provided by Applicant's friends and co-workers, but they do not mitigate either Applicant's financial indebtedness or his falsifications.

Disqualifying Condition 2 (the deliberate omission, concealment or falsification of any material facts from any personnel security questionnaire) is applicable as to both allegations. At the same time, I conclude that Applicant has not demonstrated the applicability of any of the possible mitigating conditions, including specifically MC 2 and MC 3.

In summary, I conclude that Applicant still has a substantial delinquent debt load that been addressed only recently and in amounts that have not yet significantly reduced the amounts owed.

I further conclude that his material falsifications were intentional and have not been adequately mitigated to the degree to show he is solidly on the path to financial rehabilitation.

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 make more of a showing that he has finally resolved 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

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. 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