

DATE: December 7, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-12862

ECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 35-year-old computer specialist has a history of 11 delinquent debts totaling close to \$35,000 that began in about 1996 and continues to the present. He has only recently begun to resolve any of them, and his efforts have been sporadic and inconsistent. On his security clearance application, he omitted any mention of two substantial tax liens and eight debts delinquent more than 180 days. No mitigation has been shown. Clearance is denied.

STATEMENT OF THE CASE

On March 22, 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 May 3, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made after a hearing before a DOHA Administrative Judge. The matter was assigned to another Administrative Judge, but was reassigned to me on June 28, 2004, because of caseload considerations. A Notice of Hearing was issued on July 5, 2004, setting the hearing for July 21, 2004. At the hearing, the Government did not call any witnesses, but offered seven exhibits, which were marked for identification and admitted as Government Exhibits (GX) 1-7. The Applicant testified on his own behalf and offered one timely post hearing exhibit, which was marked as Applicant's Exhibit A. All exhibits were admitted as marked. The transcript (Tr) was received at DOHA on August 9, 2004.

FINDINGS OF FACT

Applicant is a 35-year-old computer specialist. The SOR contains 11 allegations under Guideline F (Financial Considerations) and two allegations under Guideline E (Personal Conduct). In his response to the SOR, Applicant does

not expressly admit any of the allegations in the SOR, so I consider them to be denials.

After considering the totality of the evidence derived from the contents of the case file, I make the following FINDINGS OF FACT as to each SOR allegation:

Guideline F (Financial Considerations)

1.a. - Applicant was indebted to the Internal Revenue Service (IRS) on a federal tax lien filed against him in April 2002, in the approximate amount of \$2,879.51. This was for Tax Year 2000.

On June 2, 2003, Applicant sent the IRS a Cashier's Check for \$1,500 on this debt. On June 3, 2003, a release of the Levy was issued. Applicant agreed to make additional payments of \$130.00 per month. He is making additional payments (Tr at 19), but as of yet, this debt had not been fully satisfied.

1.b. - Applicant was indebted to the Internal Revenue Service (IRS) on a federal tax lien filed against him in April 2002, in the approximate amount of \$7,263.00. He is working with a company specializing in tax disputes to help him resolve this debt, but the debt is still unsatisfied (Tr at 19) and his claim of making payments unsupported by any documentation (Tr at 34).

By a post hearing letter dated August 9, 2004, Applicant expressed his intention to cease working with the tax dispute resolution company mentioned in 1.b., above, to resolve his IRS debts, and to file for bankruptcy protection (AX A). He has not yet done so.

1.c. - Applicant was indebted to Utility C for approximately \$94.00 on an account placed for collection in March 1998. Applicant has not established that this debt has been paid (Tr at 19-21).

1.d. - Applicant was indebted to Collection Agency D on an account that was placed for collection in about February 2002, in the amount of \$200.00. As of November 14, 2003, this debt had not been satisfied.

1.e. - Applicant was indebted to Bank E on an account that was charged off in March 2000 in the approximate amount of \$853.00. As of November 14, 2003, this debt had not been satisfied.

1.f. - Applicant was indebted to Bank F on an account that was charged off in about March 1997, in the approximate amount of \$791.00. A settlement agreement was reached with this creditor and Applicant has made some payments of \$50 per month. He has not, however, established the present status of the debt or otherwise documented his claimed payments.

1.g. - Applicant was indebted to Company G on an account that was placed for collection in about May 1998, in the approximate amount of \$1,342.00. As of November 14, 2003, this debt had not been satisfied. As of May 2004, Applicant was still attempting to make contact with the creditor.

1.h. - Applicant was indebted to Student Loan Firm H on delinquent student loans that were placed for collection in about December 1999, in the approximate amount of \$13,194.00. By letter dated April 23, 2004 from the student loan agency, the debts had been consolidated and were "now considered satisfied" (Attachment to SOR). What this means is that the debt is still owing, but is no longer treated as delinquent (Tr at 25).

1.i. - Applicant was indebted to Credit Union I on an account that was charged off in about June 1996 in the approximate amount of \$3,226.00. As of September 2002, this debt had not been satisfied. As of May 2004, Applicant was "pending working on settlement and payment arrangements" (Response to SOR and Tr at 26).

1.j. - Applicant was indebted to Credit Union J on a civil judgment awarded against him in

October 1997 in the approximate amount of \$5,000.00. As of September 2002, this debt had not been satisfied. Applicant has begun making payments of \$50 per month, per agreement with the collection agency (Tr at 27).

1.k. - Applicant was indebted to Auto Credit Company K on an account that was charged off in about April 1997, in the approximate amount of \$14,316.00. As of September 2002, this debt had not been satisfied. As of the hearing, Applicant was still attempting to contact the creditor (Tr at 27).

Guideline E (Personal Conduct)

2.a. - Applicant falsified material facts on a Security Clearance Application (SF 86), dated June 10, 2002, when he responded to Question **36 Your Financial Record - Tax Lien**, by saying "No" and failing to disclose that he had two Federal tax liens file against him, as alleged in SOR 1.a. and 1.b., above.

2.b. Applicant falsified material facts on the same SF 86, when he responded to Question **38 Your Financial Delinquencies - 180 Days** by saying "No" and deliberately failing to disclose that he was more than 180 days delinquent on those debts alleged in SOR 1.c., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., and 1.k., above.

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.

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, I am 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.

If the Government meets its initial burden of proof 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

Guideline F - The record of Applicant's incurring and paying off or otherwise resolving the debts cited in SOR 1.a. - 1.k. is one of procrastination, half measures and, most recently, a decision to end his efforts to satisfy his debts by paying them off and, instead, to file for bankruptcy protection. This last decision, which does not indicate Chapter 7 or Chapter 13, has not yet gone beyond the consideration stage, and does not demonstrate real rehabilitation. What he has done with the IRS is a positive step but covers only a small part of his total debt. The rescheduling of his student loan debt is also positive in that the debt is no longer delinquent, but the size of the debt has still not been substantially reduced.

Considering the size of some of the debts and the fact that some of the debts are eight or more years old and remain delinquent, Disqualifying Conditions (DC) 1- a history of not meeting financial obligations and DC 3 - inability or unwillingness to satisfy debts, are applicable. No Mitigating Conditions (MC) have been established: the financial

behavior remains current (MC 1); it is not an isolated incident (MC 3); and there is as yet no clear indication the problem is under control or is being resolved (MC 4) or that Applicant has initiated a good-faith effort to repay overdue creditors or otherwise resolve his debts (MC 6).

Guideline E - I have carefully considered Applicant's explanations for his failure to disclose the tax liens and delinquent debts on his SF 86. At the hearing, he claimed ignorance of the tax liens because his wife handled the finances (Tr at 28, 29) and he did see or become aware of the liens, even though money was being taken out of his pay check. In the context of his overall long term financial and/or tax problems, I am unable to give much credibility to his unsupported claims. As to his failure to report the delinquent debts, he claim a misreading or misunderstanding of the question on his SF 86 (Tr at 29). His claim here also lacks credibility and support (*See*, Tr at 30 - 33). He was aware he owed a lot of money to the IRS, but "didn't think it would reflect on [his] credit report at the time" (Tr at 37). I conclude as to both SOR 2.a and 2.b., that Applicant knew of the debts intentionally failed to disclose them, in the hope that they would not be discovered.

The overall record does not establish Applicant as having a history of good judgment, reliability, and trustworthiness. His good intentions notwithstanding, his conduct raises significant doubts and, under the DoD security clearance program, the need to protect classified information and material is paramount and such doubts must be construed against the granting of a clearance.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline J (Criminal Conduct) Against the Applicant

SOR 1.a. - 1.k Against the Applicant

Guideline E (Personal Conduct) Against the Applicant

SOR 2.a., 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