

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 27-year-old security officer for a defense contractor. He has ten delinquent debts, totaling more than \$12,000, that go back as far as 1998. He has not made any substantive efforts to resolve them, despite the pressure of the current adjudication. In addition, Applicant falsified his answers to three financial questions on his 2002 SF 86. Mitigation has not been demonstrated. Clearance is denied.

CASENO: 03-14785.h1

DATE: 01/10/2005

DATE: January 10, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-14785

**DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 27-year-old security officer for a defense contractor. He has ten delinquent debts, totaling more than \$12,000, that go back as far as 1998. He has not made any substantive efforts to resolve them, despite the pressure of the current adjudication. In addition, Applicant falsified his answers to three financial questions on his 2002 SF 86. Mitigation has not been demonstrated. Clearance is denied.

**HISTORY 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 April 22, 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 August 12, 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 6, 2004. Applicant did not submit a response to the FORM. The matter was assigned to me for resolution on September 13, 2004.

## FINDINGS OF FACT

Applicant is a 27-year-old security officer for a defense contractor. The SOR contains 10 allegations under Guideline F (Financial Considerations) and three allegations under Guideline E (Personal Conduct). In his response, Applicant admits nine Guideline F allegations (1.a. - 1.d. and 1.f. - 1.g., 1.i., and 1.j.) and denies two Guideline F allegation (1.e. and i.h.). Applicant also denies all three Guideline E allegations (2.a - 2.c.). Applicant's factual admissions, as cited above, are adopted as Findings of Fact.

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)*

Applicant has the following bad due debts, either past due, delinquent, charged off, or turned over for collection:

1.a. - Military Exchange A - \$329.00;

1.b. - Company B - \$102.00;

1.c. - Company C - \$180.00;

1.d. - Company D - \$2.00;

1.e. - Credit Union E - \$10,000;

1.f. - Cable Company F - \$335.00;

1.g. - Company G - \$247.00;

1.h. - Telephone Company H - \$10.00;

1.i. - Court Judgment in favor of Collection Agency - \$77.00

1.j. - Jewelry Store J - \$274.00.

*Guideline E (Personal Conduct)*

2.a. - 2.e. allege falsifications by Applicant in response to three separate questions on his February 4, 2002 security clearance application (SF 86). In response to:

2.a. Question **27b. Your Financial Record**, Applicant improperly omitted to mention that some of his property had been repossessed within the previous seven years;

2.b. Question **27d. Your Financial Record - Unpaid Judgments**. "In the last seven years, have you had any judgments against you that have not been paid? Applicant knowingly omitted any mention of the \$77.00 judgment filed against him in September 1999, as alleged in SOR 1.i., above.

2.c. - Question **28a. Your Financial Delinquencies- 180 days**, "In the last seven years, have you been over days delinquent . . .," Applicant answered "No," and improperly omitted any mention of the delinquent debts cited in SOR 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., and 1.j., 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.

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 judgment, irresponsibility, or emotionally unstable behavior.

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.

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 whether Applicant had established mitigation of all or any of the allegations.

### *Financial Considerations*

Since Applicant did not submit a response to the FORM, the most recent information in the case file is that supplied by Applicant in response to the SOR (Item 3). Applicant admitted all but two of the Financial Considerations allegations, expresses an intent "to either pay or work out a payment agreement and when I get my tax refund in the year 2003. I will try to pay off the larger ones or make arrangement." There is absolutely no evidence that Applicant carried through with his promise. In the absence of such evidence, I must conclude that he has not done so as of the date the record closed in September 2004. I conclude therefore that Applicant remains delinquent on 10 debts, exceeding \$12,000, the earliest of which became delinquent in 1998 (SOR 1.f.). Applicant denied the allegations under SOR 1.e. and 1.h. (Item 3). As to 1.e., while Applicant claims the creditor agreed to give him a waiver (Items 5 and 7), he has not provided any documentation, and the debt continues to be cited in the recent credit report, as is the debt cited in SOR 1.h. (Item 8). Under these circumstances, Applicant has not demonstrated these debts have been satisfied.

On the basis of the entire record, I conclude that the following specific adjudicative guidelines to be most pertinent to this case:

Disqualification and Mitigation - *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.

*GUIDELINE E (Personal Conduct)*

I have carefully considered Applicant's explanations for the omissions alleged in SOR 2.a., 2.b., and 2.c., which I paraphrase as follows: (2.a.) He did not list the repossession because he had "voluntarily surrendered the vehicle" and did not think this was equivalent of a repossession (Item 3); 2.b. and 2.c. - He was not aware of these debts until his interview with the Defense Security Service agent in November 2002 (Item 5).

His claim is one that is easy to make and difficult to disprove, as are most efforts to prove a negative. To accept the claim, I must first conclude that the claim is credible and, considering the scope, scale, and nature of the debts, I conclude his claim is not credible, for the following reasons: (1) there are admittedly delinquent debts to 10 different creditors, including one to a military credit union. It stretches credibility too far to conclude that the credit union and the other creditors never sought to contact Applicant over the years the debts were delinquent and/or sent to collection or had tried to contact him but were unsuccessful; (2) Applicant stated he had negotiated with the military credit union and received a "waiver of any additional liability" (Item 5), but he has never provided such a document; and (3) the delinquent debts continue to appear on recent credit reports (Item 8)

In regards to SOR 2.a., even if Applicant did not understand that his returning the car was legally a repossession, the underlying debt was still the result of his inability or unwillingness to keep current on the car loan, so he should have reported the debt as delinquent under Question 28a. and answered yes to SOR 2.c. Overall, Applicant's conduct and statements do not establish a single discernible truth. To the contrary, he has raised more questions than he has resolved by documentation and other objective evidence.

Disqualification and Mitigation - *The Concern*: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information;

Condition that could raise a security concern and may be disqualifying:

2. Deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, or similar forms used to conduct investigations . . . .

Conditions that could mitigate security concerns:

None that are established under the facts of this case.

Overall, his lack of action in resolving his debts demonstrates financial irresponsibility and his willful falsification of answers to three questions on his SF 86 raises even more serious questions. He has not provided evidence of mitigation or extenuation. It is fundamental to the security adjudication process that doubts must be resolved against the granting of a clearance. Applicant's conduct contains too many recent examples of the exercise of poor judgment, unreliability, and untrustworthiness under the two cited guidelines to permit a finding that he is currently eligible for 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) Against the Applicant

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

Guideline E (Personal Conduct) Against the Applicant

Subparagraph 3.a. Against the Applicant

Subparagraph 3.b. Against the Applicant

Subparagraph 3.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

