

KEYWORD: Financial

DIGEST: This 42-year-old driver for a defense contractor incurred 10 delinquent debts arising out of a business failure in the late 1990s. His financial situation has greatly improved and he had paid off six of the debts, has made significant inroads in paying off two others, and is seriously seeking to locate the last two creditors and resolve those debts with available assets. He has shown substantial financial rehabilitation. Mitigation has been shown. Clearance is granted.

CASENO: 03-16915.h1

DATE: 04/01/2005

DATE: April 1, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-16915

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire,

Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 42-year-old driver for a defense contractor incurred 10 delinquent debts arising out of a business failure in the late 1990s. His financial situation has greatly improved and he had paid off six of the debts, has made significant inroads in paying off two others, and is seriously seeking to locate the last two creditors and resolve those debts with available assets. He has shown substantial financial rehabilitation. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On September 8, 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 November 5, 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 January 3, 2005. A Notice of Hearing was issued on February 1, 2005, setting the matter for February 24, 2005. At the hearing the Government introduced six exhibits (Government Exhibits (GX) 1 - 6). Applicant testified and introduced six exhibits

(Applicant's Exhibits (AX) A - F). He also offered a collection of timely post hearing exhibits (AX G1 - G10). All exhibits were admitted into evidence without objection. The transcript was received at DOHA on March 4, 2005.

FINDINGS OF FACT

The SOR contains 11 allegations (1.a. - 1.k.) under Guideline F (Financial Considerations).

In his response to the SOR, Applicant *admits* allegations 1.a., 1.b., 1.d., 1.e., 1.f., 1.g., 1.h., 1.j., and 1.k. He *denies* allegations 1.c., as to the amount, and 1.i. 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 42-year-old driver for a defense contractor. As of the issuance date of the SOR, September 8, 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. - Financial Services Company A - \$1,432. The day prior to the hearing, Applicant was able to learn the name of the original creditor and contacted them (Tr at 22). The creditor agreed to resolve the debt for \$1,000, if promptly paid (Tr at 22). Applicant has documented the payment (Tr at 21 - 23, AX G1).

1.b. - Financial Service Company B - \$4,005. Applicant negotiated a settlement with this creditor and the account is closed (Tr at 22, 23 and AX G2).

1.c. - Financial Services Company C - \$910. Applicant negotiated a settlement of this debt and the account is now closed (Tr at 22 -24 and AX G3);

1.d. - Asset Management Company D - \$734. This debt has been resolved by a payment of \$592 on February 18, 2005. The account is now closed (AX G3);

1.e. - Collection Firm E - \$6,0327 Applicant has negotiated a settlement of this debt and has documented that the creditor has cashed a check of \$1,500. A second check, for \$500, was sent to the creditor by Applicant, but had not been cashed by the creditor by the time the document was submitted to DOHA (Tr at 25 and AX G4);

1.f. - Financial Services Company F - \$3,482. This is from a bank that is no longer a separate entity and Applicant has been unable to find anyone with a record of the account. He is continuing to look for it (Tr at 26);

1.g. - Financial Services Company G - \$3,427. This debt of \$3,247 has been paid in full as of March 5, 2005 (AX G7);

1.h. - Bank H - \$8,040. The record documented payments late last year that reduced the balance due to \$7,049.63 (GX 3). As of the hearing, this debt was still being disputed, but Applicant promised to pay it. He had opened an account with the creditor into which he could make payments, with the first one being due in April 2005 (Tr at 26-28).

1.i. - Company I - \$379. This is an old telephone company account that Applicant believes may not be his. He is continuing to research his liability for the debt (Tr at 19).

1.j. - Internal Revenue Service - \$15,000 in taxes, penalties, and interest for tax years 1998 to 2001. Applicant states he made monthly payments of \$225 from about September 2002 to May 2004 and \$275 per month since then (AX G10). His Federal tax return for 2004 shows a \$2,981 refund due him that will go toward the balance of his past due taxes.

In addition,

1.k. - Applicant's Personal Financial Statement of June 18, 2003, indicates that he had the ability to make substantial payments on the above delinquent debts, as shown by a monthly net remainder of \$877. The current evidence show significant payments are being made toward the delinquent debts cited in the SOR.

Applicant's current delinquent debt situation resulted from the failure of a 1997/1998 export/import business venture Applicant operated out of his home. He financed the business to a substantial degree using his credit cards and was eventually able to make only minimum payments. He was also unable to pay his taxes. His wages were garnished four times up to 2002 (GX 4). His delinquent debts totaled about \$43,000. As of the hearing on February 24, 2005, Applicant had settled six of the nine consumer debts and he has the money to settle the other three as soon as the disputed amount is agreed to (Tr at 18, 21). His post hearing submissions show continuing payments and a significant reduction of his debt load.

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)

The current evidence of record shows that Applicant has paid off the debts alleged in SOR

1.a., 1.b., 1.c., 1.d., 1.g., and 1.h. He has reached resolution agreements on the debts alleged at SOR 1.c. (he has already paid about 1/3 of the debt) and 1.i. (has made a series of payments and a tax refund of almost \$3,000 will go to the IRS). On two accounts, (SOR 1.f. -\$3,427 and 1.i. - \$379), he is continuing his efforts to find and contact the creditors so that he can resolve these debts. In summary, six debts have been paid off, two are being resolved with significant payments, and two have not yet been located, despite what I conclude are serious efforts.

Disqualifying and Mitigating Conditions

The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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), 3 is applicable since the financial problems were substantially the result of a business downturn. MC 6 is also applicable since Applicant has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. I find MC 6 to be highly persuasive in that Applicant has actually made substantial inroads into repaying or otherwise resolving his debts and has demonstrated significant financial rehabilitation to the degree that he can reasonably be relied on to continue the process he has begun.

In summary, Applicant has successfully mitigated the Guideline's concerns and can be relied upon to protect 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) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. For the Applicant

Subparagraph 1.g. For the Applicant

Subparagraph 1.h. For the Applicant

Subparagraph 1.i. For the Applicant

Subparagraph 1.j. For the Applicant

Subparagraph 1.k For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Barry M. Sax

Administrative Judge

