

DATE: July 17, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 04-09114

## **DECISION OF ADMINISTRATIVE JUDGE**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Candace L. Le'i, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

This 48-year-old employee of a defense contractor has a history of tax and consumer delinquent debt going back to 1985, only a few of which have been resolved. Mitigation has not been adequately established. Clearance is denied.

### **STATEMENT OF THE CASE**

On September 13, 2005, 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 7, 2005, 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 case was assigned to me on February 8, 2006. A Notice of Hearing was issued on February 16, 2006, setting the hearing for March 22, 2006. At the hearing, the Government offered twelve (12) exhibits (Government's Exhibits (GX) 1-12 Applicant testified and offered four (4) exhibits (Applicant's Exhibits (AX) A-D. He also submitted a timely post hearing collection of documents, which was marked as AX AA - AX GG). All exhibits were admitted without objection. The transcript was received at DOHA on March 30, 2006.

### **FINDINGS OF FACT**

Applicant is a 48-year-old employee of a defense contractor. The SOR contains fifteen (15) allegations under Guideline F (Financial). Applicant denies all of the allegations.

After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the status of each SOR allegation.

#### ***Guideline F (Financial)***

As of the issuance of the SOR, and unless otherwise noted, Applicant had a history of 13 past due debts (delinquent, charged off, referred for collection, lien filed, or reduced to judgment) to the following creditors in the approximate amounts cited:

1.a. Creditor A (judgment) ----- \$2,284.00, but Applicant has documented that this debt has been satisfied (Response to SOR and AX A).

1.b. Medical Debt B (collection) -----\$156.00.

In his Response of October 7, 2006, Applicant states he has disputed this debt, but intends to pay it to resolve the issue.

1.c. Medical Debt C (collection) -----\$472.00.

In his Response of October 7, 2006, Applicant states he has disputed this debt, but intends to pay it to resolve the issue.

1.d. State D (judgment for tax lien) (tax year 1983)-----\$753.00.

In his Response of October 7, 2006, Applicant stated that 18 months earlier, he had reached an agreement with the State and had begun make electronic fund transfers of \$125,00 per month, and he intended to continue that arrangement until the full amount owed was paid off.

1.e. Internal Revenue Service (IRS) (Tax Lien for 1984 and 1985) -----\$12,342.64.

In his Response of October 7, 2006, Applicant states he has retained the services of a tax professional to help him resolve this debt.

1.f. IRS (1994)-----\$5,571.64.

In his Response of October 7, 2006, Applicant states he has retained the services of a tax professional to help him resolve this debt.

1.g. State Tax Agency G ----- \$808.84.

In his Response of October 7, 2006, Applicant stated that 18 months earlier, he had reached an agreement with the State and had begun make electronic fund transfers of \$125,00 per month, and he intended to continue that arrangement until the full amount owed was paid off.

1.h. IRS (Tax Lien for 1995) ----- \$4,391.91

In his Response of October 7, 2006, Applicant states he has retained the services of a tax professional to help him resolve this debt.

1.i. IRS (Tax lien for 1996) ----- \$6,666.23

In his Response of October 7, 2006, Applicant states he has retained the services of a tax professional to help him resolve this debt.

1.j. State Tax Agency J (1996) ----- \$1,852.68

In his Response of October 7, 2006, Applicant stated that 18 months earlier, he had reached an agreement with the State and had begun make electronic fund transfers of \$125,00 per month, and he intended to continue that arrangement until the full amount owed was paid off.

1.k. IRS (Tax lien for 1997) ----- \$2,861.05

In his Response of October 7, 2006, Applicant states he has retained the services of a tax professional to help him

resolve this debt.

1.l. State Tax Agency (1997) -----\$893.41

In his Response of October 7, 2006, Applicant stated that 18 months earlier, he had reached an agreement with the State and had begun make electronic fund transfers of \$125,00 per month, and he intended to continue that arrangement until the full amount owed was paid off.

1.m. IRS (1998) -----\$3,243.50

In his Response of October 7, 2006, Applicant states he has retained the services of a tax professional to help him resolve this debt.

1.n. IRS (2003) -----\$99.31

In his Response of October 7, 2006, Applicant states he has retained the services of a tax professional to help him resolve this debt.

1.o. IRS (unpaid federal taxes) -----\$114,346.39 In his Response of October 7, 2006, Applicant states he has retained the services of a tax professional to help him resolve this debt.

**POLICIES**

Each adjudicative assessment and decision must view the Applicant under the Directive's "whole person" and also under nine generic factors relevant to the Applicant's conduct, including (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, including 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, page 2-1 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.

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)***

1.a. Creditor A (judgment) ----- \$2,284.00.

Applicant has documented that this debt has been satisfied (Response to SOR, Cover Sheet to Applicant's Supplemental Information, and AX A).

1.b. and 1.c. Medical Debt B (collection) -----\$156.00 and \$472.00.

In his Response of October 7, 2006, Applicant states he disputed these debts, but paid them to resolve the issues (AX BB, letter and receipt).

The above cited debts are the only ones documented to have been satisfied. The much larger debts cited below, all Federal or State tax-related remain unpaid and owing over a period of many years

1.d., 1.g., 1.j., and 1.l. State Tax liens -----\$753.00, \$808.84, \$1852.68, and \$892.41.

In his Response of October 7, 2006, Applicant stated that 18 months earlier, he had reached an agreement with the State and had begun make electronic fund transfers of \$125,00 per month, and he intended to continue that arrangement until the full amount owed was paid off. Applicant provided documentation showing an opening balance of \$4,495.97, payments of \$3,125.00, and a remaining balance of \$1,289.97. This figure covers all State tax years cited in the SOR, 1983, 1994, 1996, 1997 (AX CC).

1.e., 1.f., 1.h., 1.i., 1.k., 1.m., 1.n., and 1.o Internal Revenue Service (IRS) (Tax Lien for 1984 and 1985) ---- \$12,342.64., \$5,571.64, \$4,391.91, \$6,666.23, \$2,861.05, \$3,243.50, \$99.31, and \$114, 346.39. In his Response of October 7, 2006, Applicant states he has retained the services of tax professionals to help him resolve this debt. However, as of the closing of the record, no substantial actions had yet been taken.

In his post hearing submission, Applicant documented that he had incurred, and resolved, a number of delinquent debts in addition to those cited in the SOR (AX E and AX FF). Because they were not part of the SOR, I cannot appropriately consider these debts as additional allegations against Applicant. In any case, his conduct vis-a-vis these debts does not affect the fact that so large a percentage of the cited delinquent debts remain unpaid, and it is these debts on which this decision must be based.

I have considered the March 30, 2006 letter from Applicant's Communications Officer in Charge (AX GG), which speaks highly of Applicant, but it does not address the issues raised by Applicant's inability or unwillingness to resolve his serious financial problems, the specific problems on which the SOR concerns are based. There is no need to question Applicant's sincerity,

but his willingness and ability to take corrective action has simply not been demonstrated. In fact, nothing in Applicants evidence suggests any substantial movement toward financial rehabilitation.

*The Concern:* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. In addition, the manner in which a person takes steps to resolve, or fails to resolve, his longstanding delinquent debts raises questions about his integrity.

*Disqualifying Conditions:* (1) A history of not meeting financial obligations; and (3) Inability or unwillingness to satisfy debts; *Mitigating Conditions:* None that are established by the record; e.g., (1). the behavior remains recent; and (2). was not an isolated incident. Although some of the incurring of the massive debt may have resulted from conditions beyond his control, clearly not all of it did, and Applicant's failure to resolve the bulk of the debts over so long a period raises additional doubts about his judgment, reliability, and trustworthiness.

### **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., 1.b., 1.c. For the Applicant

Subparagraph 1.d. - 1.o. 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**