

DATE: February 1, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-12544

## **DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Melvin A. Howry, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

This 45-year-old employee of a defense contractor has a history of delinquent debts going back to 1997/1998, many of which arose when he was an enlisted man in the military. His salary was insufficient to cover current expenses when he was forced to live off base. His income did not go up enough when he left the Air Force and he was not able to pay off the delinquent debts until recently, when he obtained a loan from his parents, with no pressure to repay. All cited debts have been paid off and he has no other delinquent debts. Mitigation has been shown. Clearance is granted.

### **STATEMENT OF THE CASE**

On July 20, 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 August 22, 2005, Applicant submitted a response 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 on September 30, 2005. A Notice of Hearing was issued on November 1, 2005, setting the hearing for November 16, 2005. The Government offered six documents (Government's Exhibits (GX) 1-6). Applicant testified on his own behalf and offered 14 documents (Applicant's Exhibits (AX) A-N). The transcript was received on November 29, 2005.

### **STATEMENT OF FACTS**

Applicant is 45 years old. In his response, he admits all SOR allegations. The admissions are accepted and incorporated as Findings of Fact.

After considering the totality of the evidence of record, I make the following Findings of

Fact as to each SOR allegation:

#### Guideline F (Financial)

Applicant was indebted to the following creditors in the approximate amount cited for debts that were past due, written off, reduced to judgment, referred for collection, or otherwise delinquent:

1.a. - A judgment for \$4,169.89 was entered against Applicant in State A on April 4, 2000.

In his August 2005 response to the SOR, Applicant denied any knowledge of this debt until shown a credit report by an agent of the Defense Security Service (DSS) in July 2004. As of August 2005, Applicant had not done anything to resolve the debt as cited in the credit report. However, this debt has been paid off.

1.b. - Bank B -\$3,577.00. Applicant admits knowing about this debt and says he stopped paying on it in 1997, due to "severe economic problems" (Response to SOR). However, this debt has been paid off.

1.c. - Military Exchange C - debt of \$1,561.00, as of July 2000. Applicant admits knowing about this debt and says he stopped paying on it in 1997-1998, due to "severe economic problems" (Response to SOR). However, this debt has been paid off.

1.d. - Department Store D - debt of \$3,338.00, as of February 1999. Applicant admits knowing about this debt and says he stopped paying on it in 1997, due to "severe economic problems" (Response to SOR). This debt has been paid off.

1.e. - Bank E - debt of \$11,941.00, as of May 2000. Applicant admits knowing about this debt and says he stopped paying on it in 1998, due to "severe economic problems" (Response to SOR). This debt has been paid off.

1.f. - Bank F - \$6,619.00, as of February 1999. Applicant admits knowing about this debt and says he stopped paying on it in 1997, due to "severe economic problems" (Response to SOR)

This debt has been paid off.

1.g. - Credit Card G - \$152.00, as of February 1999. Applicant admits knowing about this debt and says he stopped paying on it in 1997, due to "severe economic problems" (Response to SOR). This debt has been paid off.

1.h. - Bank H - \$4,570.00, as of August 2004. Applicant admits knowing about this debt and says he stopped paying on it in 1997, due to "severe economic problems" (Response to SOR). The debt was charged off by the creditor in February 1999, but this debt has recently been paid off.

The above debts originally totaled approximately \$36,000.

Applicant served honorably in the U.S. Air Force from 1983 to 1997 (Id.). His financial problems began while he was a Sergeant in the Air Force (Tr at 21-23). He had to find off base housing and his expenses were more than he earned. He wound up defaulting on many of the debts during the period from 1996-1998. His creditors demanded payment, but by 2003, all eventually stopped sending him letters. At that time, he had not made enough money to begin making payments, but intended to do so if he "ever [begins] to earn more money" (Response to SOR).

At the hearing, Applicant testified and offered documentation to show that he has "paid off

in full" all of the creditors named in the SOR (Tr at 24, 25- and AX A-H). Applicant was able to negotiate settlements that allowed him to resolve the debts for amounts substantially lower than originally claimed (Tr at 27). Applicant obtained \$47,000.00 from his parents (Tr at 35) and is now "in the best financial state [he has] been in [his] life" (Tr at 32). He retains only two credit cards with current balances of \$800 and \$5,700 (Tr at 33, 42, and AX N). He has the means and expects to pay these two off in the near future, i.e., \$15,000 in two bank accounts (Tr at 42).

## 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.

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.

## CONCLUSIONS

The concern expressed in the Financial Considerations guideline is that excessive indebtedness raises the risk that a person might perform illegal acts to generate funds. A second concern, found in the language of the disqualifying condition is that the manner in which excessive delinquent debts have been incurred and/or resolved, or not resolved, can establish poor judgment, unreliability, and untrustworthiness to a degree unacceptable by someone seeking access to the nation's secrets. As found above, Applicant has paid off all of the debts cited in the SOR and has no delinquent debts of any kind at present. There is thus no longer any risk of his having to commit illegal acts to generate funds. He has therefore demonstrated significant financial rehabilitation:

*Disqualifying and Mitigating Conditions* (DC and MC) - DC 1 (a history of not meeting financial obligations) and DC 3 (an inability or unwillingness to satisfy debts) are clearly applicable. At the same time, Mitigating Condition (MC) 3 (the conditions that resulted in the behavior were largely beyond the person's control) and 6 (the individual has initiated a good faith effort to repay overdue creditors or otherwise resolve debts) are both applicable and persuasive.

I have considered Applicant's explanations. It is unrefuted that the circumstances involved Applicant serving his country. There is no suggestion of extravagant living or excessive expenditures. Applicant was caught in a financial bind that prevented him from resolving the cited debts until recently, when he received substantial financial assistance from his parents. His income has increased and he now has no delinquent debts. He views the money from his parents as a loan with no obligation to repay at any set time; i.e., a gift. He expects to be debt free in the near future

Applicant's service and work histories suggest he is man of principle, who will use the opportunity given him to his best advantage. I conclude he has demonstrated financial rehabilitation and the mitigation of his past financial problems by resolving all of the cited debts. In summary, I conclude that Appellant does currently possess the judgment, reliability, and trustworthiness required of anyone seeking 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:

Financial Considerations For the Appellant

Suballegation 1.a. For the Applicant

Suballegation 1.b. For the Applicant

Suballegation 1.c. For the Applicant

Suballegation 1.d. For the Applicant

Suballegation 1.e. For the Applicant

Suballegation 1.f. For the Applicant

Suballegation 1.g. For the Applicant

Suballegation 1.h. 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**