

DATE: May 19, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 04-12668

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 41-year-employee has a history of 30 delinquent debts beginning as early as 1996 and continuing to the present. He claims that he was away on active duty in 1999 and 2003/2004 and that his wife handled the family finances. The explanations for his lack of knowledge lack credibility and, in any case, do not cover most of the period since 1996. They also fail to explain why there has been no substantial resolution of the debts to date. In answering two financial questions on his security clearance application, he denied that he had any delinquent debts, placing sole knowledge and responsibility on his wife. His falsifications violate 10 U.S.C. 1001, a felony. Mitigation has not been established. Clearance is denied.

STATEMENT OF THE CASE

On September 28, 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 19, 2005, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the basis of the written record; i.e., without a hearing. A File of Relevant Materials (FORM) was issued on September 22, 2006, in which Applicant was informed that any response had to be submitted within 30 days of receipt. A timely response was submitted. The case was referred to me for determination on February 10, 2006.

FINDINGS OF FACT

The February 24, 2005 SOR contains two (2) allegations under Guideline B (Foreign Influence). Applicant admits both

allegations. Both admissions are accepted and incorporated herein as Findings of Fact.

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)

Applicant has a history of 26 past due debts (delinquent, charged off, referred for collection, or reduced to judgment) to the following creditors in the approximate amounts cited:

- 1.a. - Medical Firm A \$160.00.
- 1.b. - Gasoline Company B \$816.00.
- 1.c. - Department Store C \$290.00.
- 1.d. - Jewelry Store D \$461.00.
- 1.e. - Store E \$806.00.
- 1.f. - Bank F \$265.00.
- 1.g. - Creditor G \$317.00.
- 1.h. - Creditor H \$1,039.00.
- 1.i. - Department Store I \$317.00.
- 1.j. - Collection Agency J \$821.00.
- 1.k. - Collection Agency K \$1,333.00.
- 1.l. - Collection Agency L \$762.00.
- 1.m. - Automobile Company M \$12,338.00
- 1.n. - Collection Agency N \$121.00.
- 1.o. - Credit Union O \$65.00.
- 1.p. - Collection Agency P \$166.00.
- 1.q. - Tire Company Q \$ 1,417.00.
- 1.r. - Collection Agency R \$ 2,262.00
- 1.s. - Creditor S \$945.00.
- 1.t. - Collection Agency T \$155.00.
- 1.u. - Collection Agency U \$290.00
- 1.v. - Collection Agency V \$4,060.00.
- 1.w. - Collection Agency W \$119.00.

1.x. - Collection Agency X \$120.00.

1.y. - Collection Agency Y \$161.00.

1.z. - Collection Agency Z \$4,373.00.

1.aa. - Collection Agency AA \$693.00.

1.bb. - Collection Agency BB \$1,386.00.

1.cc. - Collection Agency CC \$153.00.

1.dd. - Collection Agency DD \$587.00.

Guideline E (Personal Conduct)

2.a. - Applicant falsified material facts on his Security Clearance Application (SCA) of July 10, 2002 as to Question **38 *Your Financial Delinquencies - 180 Days*** [in the last seven years], to which Applicant relied "No," and deliberately omitted any mention of the delinquent debts cited under SOR 1.a. - 1.dd., above.

2.b. - Applicant falsified material facts on his SCA of July 10, 2002 as to Question **39 *Your Financial Delinquencies - 90 Days*** [are you currently delinquent], to which Applicant relied "No," and deliberately omitted mention of the delinquent debts cited in 1.a - 1.dd., above.

Guideline J (Criminal Conduct)

3.a. - The deliberate falsifications cited in 2.a and 2.b., above, constitute violations of 10 U.S.C. 1001, a felony Applicant's wife takes "full responsibility for majority of debts that I have created [while my husband was away in the military] and regret [that this] could jeopardize my husband's employment" (Response to SOR, August 5, 2005 letter in case file).

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant 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 identity 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)

Applicant is forty-one years old. The SCA he completed was signed in July 2002 (Item 4) and the SOR was issued on July 28, 2005. Applicant's response to the FORM (received October 27, 2005), was written after Applicant was placed on notice about the Government's specific concerns. In effect, he has denied all of the allegations but two, and he has cited one or two excuses; either that he was unaware of the specific delinquent debts, or that they had been incurred by his wife while he was on active duty overseas. Specifically, he attributes the accounts themselves and the delinquent status of the accounts to his wife while he was on active duty in Korea in 1998 and in Iraq between February 2003 and April 2004 (Items 3 and 5).

Applicant's current wife (since 1997) admits to incurring the debts alleged in SOR 1c.- 1., 1 .g.- 1.i., 1.m., 1.o., and 1 .q.-1 .dd. She claims that she did so without Applicant's knowledge while he was overseas (Item 3). She claims she is unaware of the other cited delinquent debts (*Id.*). Her statements, if accepted as accurate, support Applicant's claim that he was not aware of certain debts incurred at certain times. On the other hand, even accepting the wife's statements as true, Applicant has not shown any efforts toward mitigating or extenuating any of the cited debts, as well as those debts not mentioned by his wife as being incurred by her. There appears to be no difference between those debts incurred while he was gone and those incurred when he was at home. Some of the debts became delinquent as early as 1996, while Applicant's evidence is aimed primarily at those debts incurred during the period of his absence, in 1999 and 2003/2004.

Thus, the most that Applicant has established is the some (but not even most) of the cited debts were the results of conditions beyond his control, while he was away. However, the long period of time covered by the SOR allegations (1996 to present) makes implausible any suggestion that Applicant never knew about the family's precarious financial position. Such a suggestion would mean that Applicant had been negligent to an extreme not acceptable in someone claiming he possesses the judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets.

In addition, while Applicant has submitted information he considers to be mitigating as to how the debts were incurred, he has not offered any clear explanation as to why he has not taken any substantive steps to resolve the cited debts since being put squarely on notice of the existence some time ago.

In his response to the FORM, Applicant submitted several typed letters of recommendation from work colleagues. Department Counsel did not object to their admission, but pointed out that they are all unsigned. They contain considerable praise for Applicant. They are also unsigned, as Department Counsel points out. This last point is academic, in any case, since the letters do not address the issue of Applicant's finances and have minimal impact on my evaluation.

In fact, the record does not contain any indication that Applicant has contacted the creditors or the credit reporting services with the goal gaining official support for his claim that he is not responsible for any of the cited debts. Considering the documentation establishing that so many different creditors consider Applicant to be legally responsible for the cited delinquent debts over so many years, and the absence of any evidence to the contrary, Applicant has not come close to establishing financial rehabilitation. *Disqualifying Conditions:* The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. DC (1) A history of not meeting financial obligations; (3) inability or unwillingness to satisfy debts; are clearly applicable. *Mitigating Conditions:* No mitigating conditions are shown by the record; e.g., The behavior is still recent; (2). was not an isolated incident; (3) the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation) only in part as to the incurring of some of the debts and not at all as to how the debts have been resolved; and (6) the individual has not initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Guidelines E (Personal Conduct) and Guideline J (Criminal Conduct)

Applicant's explanations for his "No" answers to Questions 38 and 39 on his July 10, 2002 SCA; in essence that he was away much of the time and allowed his wife to handle all the family finances lacks credibility. At the heart of the explanation are several questions/issues that have not been resolved in Applicant's favor. (1) How could Applicant's ignorance of family finances gone on for so many years, including long periods when he was at home; (2) Why did his wife seek to keep him in so long a state of ignorance and what did she hope to accomplish?

None of this is explained in her letter; and finally, why has so little been done to resolve the delinquent debts to date. These and other questions remain after my evaluation of the entire record. It is basic to the security clearance adjudication process that all doubts must be resolved against the granting of a clearance Applicant has not come close to mitigating the doubts raised by his continuing unresolved financial problems, his falsifications, and the related criminal conduct.

Guideline E (Personal Conduct) - 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.

Disqualifying Condition: (2) the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility is clearly applicable; Mitigating Conditions: None that are established by the record.

Guideline J (Criminal Conduct) - The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Disqualifying Conditions: (1) Allegations or admission of criminal conduct, regardless of whether the person was formally charged; and (2) A single serious crime or multiple lesser offenses. Mitigating Conditions: None that are established by the record.

I conclude that Applicant has not overcome the evidence supporting the Government's concerns, as stated in the SOR. It is not necessary to question Applicant's sincerity to conclude that he has simply not demonstrated that he currently possesses the good 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:

Guideline F (Financial Considerations) Against the Applicant

Subparagraph 1.a. - 1.dd. Against the Applicant

Guideline E (Personal Conduct) Against the Applicant

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

Guideline J (Criminal Conduct) Against the Applicant

Subparagraph 3.a. 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