

DATE: May 9, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 04-12694

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Sabrina E. Redd, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 44-year-old engineer has finally paid off or otherwise resolved his massive delinquent debts, but he has not mitigated or extenuated his falsification of answers to four important questions on his security clearance application. Mitigation has not been shown as to Guidelines E and J. Clearance is denied.

STATEMENT OF THE CASE

On June 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 June 29, 2005, Applicant submitted a Response to the allegations set forth in the SOR (RTSOR), and elected to have a decision made by a DOHA Administrative Judge based on the written record; i.e., without a hearing. A File of Relevant Materials (FORM) was issued on December 12, 2005. Applicant was notified that any response to the FORM had to be submitted within 30 days of receipt. The response was due by January 14, 2006. A timely response (RTF), was received at DOHA. The matter was referred to me for decision on January 25, 2006.

FINDINGS OF FACT

Applicant is a 48-year-old engineer for a defense contractor. The SOR contains 16 allegations under Guideline F (Financial), 1.a.-1.p.; four allegations under Guideline E (Personal Conduct); and one allegation under Guideline J (Criminal Conduct) (Item 1). In his response, Applicant admits Guideline F allegations 1.b., 1.k., and denies all others, 1.a., 1.c.- 1.j., and 1.l. - 1.p. He denies all four Guideline E allegations, 2.a.- 2.d., and he denies the single Guideline J allegation, 3.a. The factual 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

As detailed in the SOR, Applicant owed the following delinquent debts:

- 1.a. - Department Store A ----- \$3,079.00 (judgment);
- 1.b. - Company B ----- \$135.00 (collection);
- 1.c. - Telephone Company C ----- \$186.00 (charge off);
- 1.d. - Collection Agency D ----- \$50.00 (collection);
- 1.e. - Financial Service Company E ---- \$1,429.00 (collection);
- 1.f. - Cable Company F - ----- \$144.00 (collection);
- 1.g. - Collection Agency G - ----- \$13,690.00 (collection);
- 1.h. - Health Service H ----- \$96.00 (collection);
- 1.i. - Health Service I - ----- \$180.00 (collection);
- 1.j. - Health Service J - ----- \$630.00 (collection);
- 1.k. - Credit Union K - ----- \$4,367.00 (charge off);
- 1.l. - Financial Service L ----- \$225.00 (collection);
- 1.m. - Hospital M - ----- \$71.00 (collection);
- 1.n. - Cable Company N - ----- \$244.00 (collection);
- 1.o. - Medical Creditor O ----- \$619.00 (collection).
- 1.p. - Applicant's Personal Financial Statement, dated June 10, 2004, shows a monthly remainder of \$2,201.00, but Applicant has made little effort to pay on his delinquent debts as cited in the SOR.

Guideline E (Personal Conduct)

- 2.a. - Applicant falsified material facts on his security clearance application of July 10, 2003, as to Question **26 Your Police Record - Other Offenses** [in the past seven years, have you been arrested for or charges with . . .], when he answered "No" and omitted any reference to his October 31, 1999 arrest in State A, and charged with Domestic Violence. The charge was dismissed without prejudice.
- 2.b. - Applicant falsified material facts on his security clearance application of July 10, 2003, as to Question **37 Your Financial Record - Unpaid Judgments** [in the past seven years], when he answered "No" and omitted any reference to the judgment cited in 1.a., above.
- 2.c. - Applicant falsified material facts on his security clearance application of July 10, 2003, as to Question **38 Your Financial Delinquencies - 180 days** [in the past seven years], when he answered "Yes" and mentioned a \$99,000 mortgage debt, but omitted any reference to the delinquent debts cited in 1.a.- 1.n, above.

2.d. - Applicant falsified material facts on his security clearance application of July 10, 2003, as to Question **39 Your Financial Delinquencies - 90 days** [are you currently past due], when he answered "No" and omitted any reference to the delinquent debt cited in 1.a. - 1.n., above.

Guideline J (Criminal Conduct)

3.a. - The intentional falsifications alleged under 2.a.-2.d., above, each constitute a violation of 10 U.S.C 1001, a felony.

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

Applicant is a 45-year-old (born in November 1960) technical instructor. Applicant's explanations appear in his RTSOR and RTF. Based on the information in the now closed record, I conclude the following:

Guideline F (Financial)

1.a. - Debt of \$3,079.00 - Applicant claims this debt was allocated to his wife in the divorce decree and was settled by her in 1999 (Item 3). He has obtained and submitted a document from this creditor, showing the debt as recently "paid in full" (Tab A);

1.b. - Debt of \$135.00 - Applicant claims this debt has been paid in full (Item 3). He has submitted a copy of a cashed check showing this payment in July 2005 (Tab B);

1.c. - Debt of \$186.00 - Applicant claims this debt has been paid in full (Item 3). He has submitted a copy of a cashed check showing this payment in September 2005 (Tab C);

1.d., 1.h., 1.i., and 1.j. - Debts of \$50.00, \$96.00, \$180.00, and \$630.00, respectively, owed to same medical facility - Applicant claims these debts have been paid off (Item 3). He has submitted a copy of statements from this creditor showing the debt as paid off (Tabs H, I, and J).

1.e. - Debt of \$1,429.00 - Applicant claims this debt has been paid in full (Item 3). He has submitted a copy of a statement from this creditor showing the debt as "Paid in Full," as of September 22, 2005 (Tab E).

1.f. - Debt of \$144.00 - Applicant claims this debt has been paid in full (Item 3).

1.g. - Debt of \$13,690.00 - Applicant claims this creditor agreed to settle the debt for \$5,000, to be paid by October 6, 2005 (Tab G). The creditor acknowledged the payment and provided a letter stating that there was "no longer a balance due and owing" (Tab GG).

1.k. - Debt of \$4,367.00 - Applicant claims this debt has been paid in full (Item 3). He has submitted a copy of an official check to this creditor for this amount, dated October 4, 2005 (Tab K).

1.l. - Debt of \$180.00 - Applicant claims this debt has been paid in full (Item 3). He has submitted a receipt from this creditor showing the debt as paid off as of January 2000 (Tab L).

1.m. - Debt of \$71.00 - Applicant claims this debt has been paid in full (Item 3). He has submitted a copy of a statement showing this debt as paid off (Tab M);

1.n. - Debt of \$244.00 - Applicant claims this debt has been paid in full (Item 3). He has submitted a copy of a cashed check to this creditor conforming this pay off (date not clear) (Tab N).

The specific debts cited in the SOR are derived from various credit reports in the file. While credit reports are generally accurate and probative, they are not always so. Indeed, some of the admitted credit reports contain different debt figures and information from different reporting agencies. This is the case in the present matter. Applicant has submitted new information and documentation showing that he has paid off or otherwise resolved all of the debts cited in the SOR, beginning in 2005.

The record suggests that Applicant's debt load was not the result of extravagant living but, rather, the results of a failed marriage and divorce. His failure to pay off the debts earlier is a negative factor, but he did pay them off months before the hearing. I have given careful attention to his last statement on this matter, in his January 10, 2006 letter to DOHA:

Finally, my financial situation was so distorted for years as a result of argument of ownership of debt, of this joint account as a result that was over the course of time it was easier to ignore than to deal with. As a result of this inquiry, I finally had to face the issue. In filling out the Security Form in haste, I was not considerate [*sic*] of that past mess.

While Applicant's financial conduct has not always shown the best of judgment, once his attention became focused by the present adjudication, he followed through and paid off or otherwise resolved the cited delinquent debts, some of which he still believes belonged to his ex-wife. Overall, I conclude he has learned the lessons of financial rehabilitation and can be relied upon to avoid delinquencies in the future.

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.

2.a. - Applicant claims that the arrest was not "legitimate," since he did not spend a night in jails. The record shows that he was formally charged with assault and the prosecutor had to file a motion to dismiss to end the case. Under the clear language of the question, Applicant should have reported this arrest, and his explanation is simply not credible.

2.b. -2.d. - There is no question that Applicant knew about the cited delinquent debts and intentionally failed to report them. His explanations fail to mitigate that fact and are not credible.

Disqualifying Conditions - (2) The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar forms to determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and (5) A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency;

Mitigating Conditions that could mitigate security concerns: None that are established by the record; e.g., the falsifications were not an isolated incident, were recent, and the individual did not provide correct information voluntarily, and before being confronted with the facts.

It is not clear exactly what Applicant means by his explanations. His last statement on his state of mind when he completed the SCA appears in his response to the SOR, where he states: "As a result of this inquiry [into his finances], I finally had to face this issue [of delinquent debts]. In filling out the Security Form in haste, I was not considerate (*sic*) of that past mess." In context, it seems most likely that he means that his "haste" in answering questions about his finances led him to forget that he had the cited delinquent debts. Whatever he meant, his words lack credibility in light of the significant number of debts, the large dollar amounts, and the continuation and recency of the debts. Whatever Applicant was thinking at the time, he signed off on the SCA as accurate and complete, when clearly, he knew and had reason to know, it was not. This is not an acceptable excuse.

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. (1) The overall criminal conduct (falsifications) remain recent; and (2) the number of falsifications means that the crimes were not an isolated incident. In summary, while Applicant has adequately mitigated his financial problems, no such mitigation exists as to his falsifications, under both Guideline E and Guideline. Consequently, the evidence compels the conclusion that Applicant has not yet established that he possesses 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:

Guideline H (Financial) For the Applicant

Subparagraph 1.a. - 1.j. For the Applicant

Guideline E (Personal Conduct) Against the Applicant

Subparagraph 2.a. - 2.d. Against the Applicant

Guideline J (Criminal Conduct) Against the Applicant

Subparagraph 1.e. 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