

DATE: September 22, 2006

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In Re:

SSN:-----  
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Applicant for Security Clearance

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ISCR Case No. 05-00335

## **DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jennifer I. Goldstein, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

This 46 -year-old software engineer received discharges in bankruptcy in 1986 (\$61,121.00); 1992 (\$131,773.00); and 2000/2001 (\$212, 707.00). Since the 2001 discharge, he has again incurred significant delinquent debts, many of which have recently been paid off, but only after the current adjudication process began. It is not clear whether Applicant has learned the hard lessons of financial discipline or is simply responding to pressure; i.e., his desire to keep his clearance. Mitigation has not yet been adequately established. Clearance is denied.

### **STATEMENT OF THE CASE**

On September 27, 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 15, 2005, and again on November 14, 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 written record; i.e., without a hearing. A File of Relevant Material was issued on June 29, 2006. Applicant was informed that any response to the FORM was due within 30 days of receipt. In this case, any response was due by July 29, 2006. Applicant submitted a timely response on July 5, 2006, to which Department Counsel did not object. The case was assigned to me for resolution on August 14, 2006.

### **FINDINGS OF FACT**

Applicant is a 46-year-old software engineer director for a defense contractor. The SOR contains sixteen (16) allegations under Guideline F (Financial). Although Applicant responded to the SOR, none of his answers can

appropriately be considered to be literal admissions of fact. Therefore, all of them are deemed to be denials.

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 past due debts (delinquent, charged off, referred for collection, or reduced to judgment) to the following creditors in the amounts cited below. The current status of each debt is also given:

1.a. Creditor A --\$69.00. This debt was settled on October 28, 2005, by a check for \$82.11 (Attachment to FORM R-1A, check with deposit stamp).

1.b. Telephone Company B -- \$331.00. This debt was covered by Applicant's bankruptcy. He disputed the debt with Credit Bureau Report (CBR) and it has been deleted.

1.c. Telephone Company C-- \$111.00. This debt was settled on April 24, 2006, by a check for \$158.95 (Attachment R-1C, copy of statement).

1.d. Telephone Company D--\$142.00. Applicant says this account was not his. It has been removed from his CBR.

1.e. Child Support --\$6,947.00. As of now, the arrearage has been paid. Attachments R-1E and R-1Ea show a settlement.

1.f. State Agency F -- \$2,937.00. As of now, the arrearage has been paid. Attachment R-1F shows a settlement.

1.g. Creditor G -- \$979.00. As of May 2006, this debt has been settled and has a zero balance (Attachment R-1G, R-1Ga).

1.h. Credit Card Company H --\$2,763.00. As of May 4, 2006, this debt has been settled and shows a zero balance (Attachments R-1H, R-1Ha).

1.i. Creditor I--\$11,118.00. Applicant has been seeking to resolve this debt but has not yet received documentation from the creditor. Applicant disputed this debt and it has been removed from the CBR.

1.j. Utility Company J--\$80.00. This debt was settled on November 15, 2005 (Attachment R-1J).

1.k. Creditor K -- \$3,271.00. This debt was included in the March 19, 2001 bankruptcy and should not have been cited in the CBR as including a balance due. The most recent CBR shows a zero balance (Pages 4 and 5).

1.l. Utility Company L --\$112.00. This debt was included in the March 19, 2001 bankruptcy. It has been removed from the CBR. No history of -the dispute has been found.

1.m. State Tax Agency M--\$4,132.00. Applicant disputed this debt, and it has been removed from the current CBR.

1.n. In May 1986, Applicant obtained a Bankruptcy Court discharge of debts totaling \$61,150 under Chapter 7.

1.o. In May 1992, Applicant obtained a Bankruptcy Court discharge of \$131,773 in debts under Chapter 7.

1.p. In 2000/2001, Applicant obtained a Bankruptcy Court discharge of \$212,707.00 under Chapter 7, which had been converted from a Chapter 13 (GX 17). In the most recent credit bureau report (GX 7), this is the only bankruptcy shown.

**POLICIES**

In evaluating the relevance of an individual's conduct, the adjudicator should consider the following nine generic factors: (1) The nature, extent, and seriousness of the conduct; (2) The circumstances surrounding the conduct, to include knowledgeable 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.

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

Applicant is a 46-year-old employee of a defense contractor. He has had a series of financial problems over the past several decades. I conclude that all of the actual allegations made in the SOR were originally accurate. I also conclude that since 2005, and particularly over the past few months, he has made substantial progress toward paying off of resolving most of the cited delinquent debts, and had been seeking to identify and resolve them.

Applicant has documented paying off or otherwise resolving the delinquent debts cited in the following allegations: 1.a., 1.c., 1.e., 1.f., 1.g., and 1.j.

Applicant has documented that the following delinquent debts were discharged in the 2000 bankruptcy and have been removed from his credit bureau report: 1.b., 1.k., 1.i., and 1.m.

Applicant has disputed the delinquent debts cited in the following allegations, and they have been removed from his credit bureau report: 1.d., 1.h., 1.l.

Applicant has been through Chapter 7 bankruptcies in 1986, 1992, and 2000, with debts discharged in all three instances (1.n., 1.o., 1.p.). Applicant states the cause of the bankruptcies to be (1) 1985 -\$61,150.00 in debts discharged - due to "a divorce," (2) 1992 -\$131,773.00 - due to another "divorce," and (3) 2000 - \$30,385.02 in debts discharged - due to "a lot of bills and not enough money to pay them"(GX 8). In his Personal Financial Statement, dated November 2002 (Attachment to GX 8), Applicant does not list any monthly debts, except \$200 to an attorney. Yet, within a few years, Applicant again had incurred significant delinquent debts, as cited in the SOR. I conclude from this history that Applicant had again fallen into the same pattern of spending more than he earned that led to the earlier Bankruptcies. It is a matter of record that Applicant did not move to resolve most of the delinquent debts cited in the SOR until he felt the pressure caused by the security clearance investigation that resulted in the current adjudication, so the weight to be given his efforts is less than it would have been if he had acted earlier.

The most recent credit bureau report, dated May 17, 2006, shows 20 currently "satisfactory accounts" and no currently "delinquent/derogatory accounts." However, the report also cites an "Approximate Total Debt" of \$14,966.00, and a

credit score of 568, which "represents a medium high risk for most lenders"(*Id.*).

Viewed under the Directive's "whole person concept," it is an inescapable conclusion that the 46-year-old Applicant (born 1960) has had serious delinquent debts for more than 20 years, characterized by (1) financial problems, followed (2) by a Chapter 7 Bankruptcy, followed (3) by more financial problems, (4) a second Chapter 7, (5) another round of financial problems, (6) a third Chapter 7 Bankruptcy, followed (7) by yet a fourth period of incurring of significant delinquent debts that has produced a current "medium high risk" level from a credit reporting service.

**Guideline F (Financial Considerations) - *The Concern*:** An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

Disqualifying Conditions: (1) A history of not meeting financial obligations; (3) Inability or unwillingness to satisfy debts.

Mitigating Conditions - None that are established by the record; e.g., (1). The behavior remains recent; (2). It was not an isolated incident; (3) There is insufficient evidence to conclude that conditions that resulted in the recent and past financial misconduct were largely beyond the person's control as to the incurring and delayed resolution of the debts; e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation; and (4) There is no evidence that Applicant has received or is receiving counseling for the problem and there are no clear indications that the problem is being resolved or is under control. Mitigating Conduct (6) is only partially applicable in that Applicant initiation of his effort to repay overdue creditors or otherwise resolve debts took so long to get under way.

Despite the recent resolution of most of the cited debts, I am, as yet, unable to conclude that Applicant has demonstrated a fundamental change in his long standing character traits and financial habits. Consequently, he had not established that he as yet possesses the good judgment, reliability, and trustworthiness required of anyone seeking a security clearance. In the year that must pass after this decision becomes final, at which time Applicant can reapply for a clearance, he will have the opportunity to continue the resolution of his delinquent debts and to show that he can be considered to have shown financial rehabilitation.**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. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. Against the Applicant

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. Against the Applicant

Subparagraph 1.k. Against the Applicant

Subparagraph 1.l. Against the Applicant

Subparagraph 1.m. Against the Applicant

Subparagraph 1.n. Against the Applicant

Subparagraph 1.o. Against the Applicant

Subparagraph 1.p. 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**