

DATE: May 23, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-04006

DECISION OF ADMINISTRATIVE JUDGE

BARRY M SAX

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 28-year-old engineering technician had a history of financial problems, but these have substantially been paid off, or are being paid in installments. He has documented most of his claimed payments. Mitigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On August 9, 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 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 November 2, 2005, 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 December 12, 2005.

FINDINGS OF FACT

Applicant is a 36-year-old employee of a defense contractor. The February 24, 2005 SOR contains nine (9) allegations under Guideline F (Financial). Applicant admits all allegations, with explanations. All 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 eight (8) 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 -----\$340.00;

1.b. - Medical Firm B ----- \$816.00;

1.c. - Communications Firm C ----- \$49.00;

1.d. - Hospital D ----- \$104.00;

1.e. - Bank E ----- \$8,470.00;

1.f. - Credit Company F ----- \$5,622.00;

1.g. - Collection Agency G ----- \$990.00;

1.h. - Creditor H ----- \$64.00; and

1.i. - Applicant filed a Voluntary Petition for Chapter 7 Bankruptcy Protection on April 9, 1999. The bankruptcy was discharged on July 7, 1999, some seven years ago.

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 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 28-year-old engineering technician. The SCA he completed was signed in November 2003. The SOR was

issued on August 9, 2005, and his response was dated August 22, 2005. In his response to the SOR, Applicant admitted all allegations.

1.a and 1.b., Applicant believes both debts (\$340.00 and \$816.00) to be hospital-related and claims he is making monthly payments of \$50.00 (Item 3). In his Response to the FORM of November 20, 2005, he reiterates his claim of making continuing payments and shows a recent payment (RFORM at page 3). I find that substantial payments are being made. This allegation is found in favor of Applicant.

1.c. - Applicant paid off this debt of \$49.09 on August 19, 2005 (Item 3; and Response to FORM (RF) at page 2). This allegation is found in favor of Applicant.

1.d. - Applicant paid this debt, which was reduced by partial payment to \$64.00 and then paid off in August 2005. (Item 3, page 1). This allegation is found in favor of Applicant.

1.e. - This was a car loan. Applicant states that on August 22, 2005, he contacted the creditor and an agreement was reached wherein the creditor would liquidate its financial claim of \$8,470.00 once Applicant paid \$50 per month through December 2005 and \$100 in January 2006, after which Applicant would pay an additional \$1,500 from a 2005 tax return. As of November 2005, Applicant had reached an agreement with the creditor to make specified payments on this debt. No payments were due in December 2005, after the record in this case closed, and none have been documented. However, because of his payments and resolution on the other debts, I find the agreement on this one debt to be part sincere on Applicant's part and indicative of his overall progress toward rehabilitation (RF at page 4).

1.f. - Applicant states that he contacted this creditor on August 22, 2005 and the creditor agreed to liquidate its original claim for \$7,690, if Applicant paid \$50 per month through December 2005 and \$100 in January 2006, after which Applicant would pay an additional \$1,500 from a 2005 tax return. Applicant claims the debts cited in 1.e. and 1.f. are actually the same debt (Item 3). His documentation (RF at page 4), cites the creditor as possessing both names, apparently one as the original creditor and the other as the collection agency. On this basis, I conclude the two debts are actually the same one.

1.g. - Applicant claims this debt of \$990.00 was currently being paid in installments of \$50 per month, with a balance due as of August 19, 2005 of \$290.00, with regular payments continuing after that date. (Item 3, page 2-17). As of November 2005, he had just made a payment of \$90.00 (RFORM at page 1). Applicant has made numerous payments on the account and has substantially resolved the debt. This allegation is found in favor of Applicant.

1.h. - Applicant paid this debt of \$63.00 in full on August 19, 2005. (Documentation at Item 3, page 1).

1.i. - Applicant filed for bankruptcy protection in 1999 because "my amount of debt exceeded my income and what I could afford to pay" (Item 3).

Analyzing dates and dollar amounts, it is apparent that Applicant's 1999 Chapter 7 discharge did not end his financial problems. Specifically, after the discharge, he incurred eight (8) new debts totaling about \$15,744.00. Applicant's explanations for why he delayed so long in addressing the debts suggests that immaturity and procrastination were at the heart of his problem. He has now made substantial organized efforts and has made significant payments toward paying off and/or resolving all of the cited delinquent debts.

It is a fact that Applicant sought and received Bankruptcy protection in 1999, and that he subsequently incurred significant new debts. However, his recent conduct has been positive and his stated acceptance of responsibility has been translated into significant action. I have carefully considered Applicant's response to the FORM. I find it candid as to his taking responsibility for his past shortcomings and credible as to coming to an understanding about the "importance of [his] taking care of these [financial] things, immediately and not putting them off."

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. The concern stated above is clearly aimed at the risk that someone with excessive debts may exercise poor judgement to get out from under that debt load. There is considerable logic in the premise that a person who did not act improperly when he had large/excessive debts is not likely to do so now, when

the debt load has been substantially reduced and the creditors are not treating the debts as presently delinquent or are otherwise pressing for immediate payment. Security clearance adjudications do not seek perfection, nor are they meant to be punishment. Rather they are risk analyses based on a combination of past and current behavior.

Disqualifying Conditions: (1) A history of not meeting financial obligations; and (3). Inability or unwillingness to satisfy debts; *Mitigating Condition:* (6) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts

In summary, I understand the Government's concerns, but I conclude that Applicant has not only promised changes but has taken significant steps toward carrying through, showing substantial rehabilitation. I further conclude that he can be relied upon to avoid similar problems in the future. I am satisfied that he possesses the good judgment, reliability, and trustworthiness required of someone 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) For the Applicant

Subparagraph I.a.-1.i. 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