

DATE: October 26, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 05-04266

**DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

This 34-year-old security officer has a history of delinquent debts exceeding \$67,000 and that remain unresolved. In addition she intentionally omitted any mention of the repossessions and delinquent debts on her security clearance application. 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 26, 2005 and Marsh 13, 2006, 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. On April 25, 2006, Department Counsel issued a File of Relevant Material (FORM). Applicant was instructed that any response to the FORM was due within 30 days of receipt. In this case any response was due by August 23, 2006. A timely submission was received on July 17, 2006. The matter was assigned to me for decision on August 29, 2006.

**FINDINGS OF FACT**

Applicant is a 34-year-old security officer for a defense contractor. The SOR contains 22 allegations under Guideline F (Financial Considerations) and three (3) allegations under Guideline E (Personal Conduct). Applicant admits allegations 1.f., 1.g., 1.h., 1.i., 1.j., 1.k., 1.n., 1.o., 1.p., 1.r., 1.s., 1.t., 1.u., and 1.v. She denies allegations 2.a. and 2.b., and states she cannot admit or deny allegation 2.c., which I accept as a denial. She adds comments and explanations. All specific 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 delinquent debts. Per the credit reports on which the SOR was issued on January 9, 2006, Applicant owed the following past due debts (delinquent, charged off, referred for collection, or reduced to judgment) to the following creditors in the approximate amounts cited:

- 1.a. Credit Union A -----\$1,019.00 (Item 8 at 4, Item at 4).
- 1.b. Medical Creditor B -----\$156.00 (Items 8 at 5, Item 9 at 5).
- 1.c. Medical Creditor C -----\$495.00 (Id.). .
- 1.d. Bank D -----\$1,163.00 (Item 8 at 6).
- 1.e. Credit Union E -----\$7,190.00 (Item 12 at 8).
- 1.f. Financial Company F-----\$291.00 (Items 7 at 1,2).
- 1.g. Financial Company G - \$1,060.00 (Item 7 at 2).
- 1.h. Financial Company H -----\$1,400 (Item 7 at 3).
- 1.i. Bank I -----\$226.00 (Item 8 at 6; Item 7 at 1,2,; Item 9 at 6).
- 1.j. Financial Company J -----\$8,907.00 (Item 8 at 4).
- 1.k. Creditor K -----\$802.00 (item 8 at 6).
- 1.l. Financial Company L -----\$1,121.00 (Item 6 at 2, Item 7 at 2).
- 1.m. Bank M -----\$22,000,00 (Id.).
- 1.n. Collection Agency N -----\$1,427.00 (Item 6 at 1, Item 7 at 1).
- 1.o. Creditor O -----\$1,121.00 (Item 7 at 1).
- 1.p. Electric Company P -----\$363.00 (Item 6 at 2, Item t at 2).
- 1.q. Finance Company Q -----\$6,852.00 (Item 7 at 2).
- 1.r. Financial Company R -----\$4,805.00 (Item 8 at 5, Item 2 at 2).
- 1.s. Creditor S -----\$120.00 (Item 8 at 6, Item 9 at 6).
- 1.t. Financial Company T -----\$335.00 (Item 6 at 2).
- 1.u. Creditor U-----\$6,192.00 (Item 7 at 2).
- 1.v. Collection Agency V-----\$365.00 (Item 8 at 7).

The above 22 delinquent debts total about \$67,410.00 and began in about 2001. None have been shown to be paid off or otherwise resolved.

***Guideline E (Personal Conduct)***

Applicant falsified material facts under the following questions on her SCA, dated March 25, 2001 (Item 5):

2.a. - Question **35 Your Financial Record - Repossessions** [in the past seven years]. Applicant answered "No," whereas in truth, she deliberately failed to cite her repossessions as set forth in SOR 1.e., 1.j., and 1.m., above;

2.b. - Question **38 Your Financial Delinquencies -180 days** [in the past seven years]. Applicant answered "No," whereas in truth, she deliberately failed to cite the debts cited in 1.a. - 1.d., 1.f., 1.h., 1.I., 1.k., 1.n., 1.o., 1.r., 1.s., 1.u., 1.v., above; and

2.c. - Question **39 Your Financial Delinquencies -90 days** [are you currently delinquent]. Applicant answered "No," whereas in truth, she deliberately failed to cite the debts cited in 1.g., 1.l., 1.p, 1.q, and 1.t., above.

**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 complied with the requirement 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 SOR.

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**

*Financial Considerations* - All of the financial allegations are supported by the Government's evidence and have not been refuted or mitigated by Applicant testimony and/or documentation. In her response to the SOR, Applicant denies ever having an account with the creditors cited in 1.a, 1.b, 1.c., and 1.d. However, these debts appear in credit reports, as cited above, along with the debts admitted by Applicant. In her response to the FORM, at paragraph 6, Applicant cites the creditors named on SOR 1.a., 1.b.,1.c., 1.d., 1.l., 1.m., 1.n., and 1.q., and states as to each one "I did not have nor have I ever had and account with [them]." The last four of these debts are ones she admitted in her response to the SOR.

In her response to the FORM, she states she has contacted a credit counseling service, which believes some of the debts, 1.l., 1.n., and 1.q., may be duplicates; e.g., collection agency follow ups to original accounts cited in the SOR. However, Applicant did not state or show which debts she thinks may be duplicates of each other, and it is not clear from simply

looking at the CBRs.

Considering the totality of the evidence, I find that all of the debts are supported by information on one or more of the Credit Bureau Reports (CBR), Items 6, 7, 11, and 12. Applicant is correct that several of the debts, 1.a., 1.b., 1.c., 1.m., and 1.q. do not appear on the 2005 and 2006 CBRs (Items 6 and 7), but they do appear on earlier 2001 and 2002 CBRs (Items 8 and 9). Since applicant denies any knowledge of the debts (Response to the FORM), the fact that they no longer appear on the CBRs cannot be due to any effort at resolution by her. In addition, she has not shown that any debts are in fact duplicates of any other debts.

In any case, all of the debts cited in the SOR are supported by varying degrees of evidence. At the same time, Applicant has not documented or otherwise shown any resolution of the documented delinquent debts. Although she has contacted a consumer credit counseling service, she did so only recently, and no payments have as yet been shown. I conclude that as of the closing of the record, Applicant still owes at least \$67,410.00

*Disqualifying and Mitigating Conditions - 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:* E2.A6.1.2.1. A history of not meeting financial obligations; and E2.A6.1.2.3. Inability or unwillingness to satisfy debts. *Mitigating Conditions:* None

Overall, I conclude she has not yet demonstrated financial rehabilitation and does not presently possess the good judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets.

*Personal Conduct -* As discussed above, Applicant has not made a persuasive case that she did not know of the delinquent debts at the time she signed the SF 86 in March 2001. In her response to the FORM, she offers a scenario wherein there were two versions of the SF 86.

If she is saying that she did mention the 22 debts in the first version, but that someone else prepared the final version, she faces the reality that (1) she earlier denied knowing anything about many of the debts; and (2) she admits that she initialed each page and signed off on the bottom of the last page, thereby certifying the accuracy of everything on the document.

*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 Conditions:* (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 or trustworthiness, or award fiduciary responsibilities. *Mitigating Conditions:* None that are established by the record.

In summary, under both Guidelines, Applicant has not overcome the weight of the Government's evidence by demonstrating financial rehabilitation or the good judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets.

In the year that must pass from the date this decision becomes final and Applicant can request reconsideration for a security clearance, she will have the opportunity to complete the financial resolution process she is just beginning.

### **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

Subparagraph 1.q. Against the Applicant

Subparagraph 1.r. Against the Applicant

Subparagraph 1.s. Against the Applicant

Subparagraph 1.t. Against the Applicant

Subparagraph 1.u. Against the Applicant

Subparagraph 1.v. 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**