

DATE: October 18, 2006

In Re:

Applicant for Security Clearance

CR Case No. 05-13725

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 44-year-old web designer has a history of financial problems that began with the breakup of her marriage, leading to a divorce in December 1997 and the financial problems that ensued. She had 12 delinquent debts totaling about \$12,500. [\(U\)](#)

She has received credit counseling and has paid off six of the 12 creditors, with a formal plan to pay the rest per agreements with the creditors. She has documented the payments and her efforts to resolve the rest. Substantial mitigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On January 8, 2006, 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 March 2, 2006, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The case was assigned to me on April 11, 2006. A Notice of Hearing was issued on April 28, 2006 and the hearing was held on June 2, 2006. The Government offered six (6) exhibits (Government Exhibits (GX) 1-6). Applicant offered four exhibits (Applicants Exhibits (AX) A-D). Applicant also submitted sixteen (16) timely post hearing exhibits (AX E1-E16). The transcript was received at DOHA on June 13, 2006.

FINDINGS OF FACT

Applicant is a 44-year-old web developer for a defense contractor. The SOR contains thirteen (13) allegations under Guideline F (Financial Considerations). Applicant admits 12 of the 13 allegations, all except for 1.k., which she denies. 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. As of the issuance of the SOR 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. - Bank A -----\$327.00. This debt has been paid off.
- 1.b. - Telephone Company B -- \$54.00. This debt has been paid off.
- 1.c. - Company C -----\$110.00. This debt has been paid off.
- 1.d. - Health Agency D -----\$64.00. This debt has been paid off.
- 1.e. - Veterinary Clinic E -----\$125.00. This debt has been paid off.
- 1.f. - Bank F -----\$1,852.00.
- 1.g. - Company G -----\$3,382.00.
- 1.h. - Bank H ----- \$2,207.00.
- 1.i. - Bank I -----\$1,791.00.
- 1.j. - Bank J -----\$1,586.00.
- 1.k. - Loan Company K-----\$878.00.
- 1.l. - Baseball Team L -----\$128.00. This debt has been paid off.
- 1.m. - Internal Revenue Service (IRS) tax lien for \$62,015.39 -filed July 30, 1999, and released on October 27, 1999.

Applicant has received financial counseling from a consumer credit counseling service, has paid off six of the creditors, and is in the process of resolving the remaining delinquent debts.

Applicant is strongly supported by her supervisors. Her Program Manager has known her since 1997 and has found her work to be superior, even during the difficult period of her divorce (AX A). Her immediate supervisor calls her an "exemplary" employee who "complies with all rules and regulations," and has had "no security violations" (AX B). Her performance has led to yearly raises of 7%, 6% and 6.9%, which "has helped her meet her financial commitments" (*Id.*). Her brother, an Air Force Major, attests to Applicant's financial problems with her husband during her divorce, her efforts to care for her children, and to repair her credit. He states that her character is such as to preclude any improper conduct on her part and that her financial position continues to improve (AX C). Her current salary is \$2,372.42 gross and \$1,727.56 net every two weeks (AX D).

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 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

Applicant is a 44-year-old web developer. In her response to the SOR, she admitted all of the allegations, but one, which she subsequently admitted. She provided explanations for the circumstances of each debt, and has provided supporting documentation at the hearing and in timely post hearing documents.

Applicant testified that none of the debts alleged in the SOR had been incurred recently, but came from the period of her marriage (Tr at 18). She has recently made significant movements toward financial rehabilitation.

1.a. and 1.b. - As cited below, these debts have been paid off.

1.c., 1.d., - These were debts her ex-husband was supposed to pay, by general agreement, but not specifically named in the divorce decree, which was finalized in June 2001. (Id.). As cited below, these debts have been paid off.

1.e. - This \$125 debt was to a veterinarian, with whom she discussed the amount of the charges for her pet. As cited below, this debt has been paid off.

1.f. - She made some payments on this bank credit card debt, but she stopped because of a lack of funds. She is now receiving financial counseling and has contacted the three major credit reporting services with the aim of resolving the amounts due on the still outstanding debts.

1.g., 1.h., 1.i., 1.j., and 1.k. - She is now receiving financial counseling and has contacted the three major credit reporting services with the aim of resolving and paying the amounts due on the still outstanding debts (AX E2, E3, and E4).

1.l. - Applicant has paid off this debt.

1.m. - Applicant asked the IRS to file the tax lien during the divorce because she was concerned her husband would take the proceeds from the sale of the family home and leave her at least partially stuck with a tax lien (Tr at 24). The lien was released in October 1999, some four months after it was originally filed.

In summary, as of the end of the hearing, the debts alleged in SOR 1.a.- 1.l were still substantially unpaid or otherwise unresolved. However, Applicant did submit a package of post hearing documentation (AX E). She has now spoken with a credit counselor, who has advised her as to how to resolve her delinquent debts and to correct reporting errors (AX E1).. The documents include letters to the three major credit reporting services (AX E2, AX E3, and AX E4). She has also submitted copies of correspondence and bank checks, showing payments in full to the creditors cited in SOR 1.a.

(\$327); 1.b. (\$54); 1.c. (\$110); 1.d. (\$64); 1.e. (\$125); and 1.l. (\$128). The debts alleged in SOR 1.f. (\$1,852); 1.g. (\$3,382) and 1.h. and 1.i. (\$2,207 and \$1,791); 1.j. (\$1,586); and 1.k. (\$878) remain unresolved as of the closing of the record.

Applicant states that "credit card amounts that were sold should reflect a zero balance" and that this would "substantially reduce my total debt by almost half" (AX E1). It is not uncommon in DOHA cases involving financial issues for credit reports to cite the same debt under both the original creditor and a collection agency to which it was sold. This issue should be resolved by her communications with the credit reporting services.

Letters to the credit reporting agencies were written on June 12, 2006, some 10 days after the hearing. The package of documents she submitted to DOHA by fax on July 3, 2006 does not contain any responses from the credit reporting companies. However, the documents show that Applicant paid off six of the smaller debts, totaling about \$808. I have evaluated the favorable letters submitted by Applicant. The writers were all aware of Applicant's divorce and financial situation and attest to her positive character and judgment.

Applicant could certainly have moved faster, but after a review of the entire record, I conclude that Applicant has learned the hard financial lessons and has established financial rehabilitation to the degree that she can safely be relied upon to exercise the financial judgment, reliability, and trustworthiness required by anyone seeking access to the nation's secrets.

In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors: E2.2.1.1. The nature, extent, and seriousness of the conduct; E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation; E2.2.1.3. The frequency and recency of the conduct; E2.2.1.4. The individual's age and maturity at the time of the conduct; E2.2.1.5. The voluntariness of participation; E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes; E2.2.1.7. The motivation for the conduct; E2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and E2.2.1.9. The likelihood of continuation or recurrence. I have considered all nine factors, individually and collectively, in reaching my overall conclusion. Viewing Applicant's financial conduct under the Whole Person concept, I conclude that Applicant can be relied upon to safeguard classified information, as she has done in the past.

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:* E2.A6.1.3.3. Applicant's financial problems were largely due to matters beyond her control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation). Under E2.A6.1.3.6. Applicant has recently initiated a good-faith effort to repay overdue creditors or otherwise resolve debts and has paid off six of her 12 creditors, albeit the smaller ones.

I conclude Applicant has demonstrated substantial rehabilitation and can be relied upon to continue her efforts. In summary, I conclude she 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) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. For the Applicant

Subparagraph 1.g. For the Applicant

Subparagraph 1.h. For the Applicant

Subparagraph 1.i. For the Applicant

Subparagraph 1.j. For the Applicant

Subparagraph 1.k. For the Applicant

Subparagraph 1.l. For the Applicant

Subparagraph 1.m. 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

1. She asked the Internal Revenue Service to file a tax lien on the proceeds of the family home that was being sold, because she was concerned that her husband would find some way to obtain and keep all of the money for himself. The tax lien was satisfied from the proceeds of the sale and the lien was released within a few months. I do not see any delinquent debt issue, nor do I find any negative effect on her eligibility for a security clearance.