

KEYWORD: Financial

DIGEST: Applicant's financial problems began in 1996. Substantial Federal and state tax liens were satisfied several years ago. Other delinquent debts have been substantially paid off. Applicant is seeking to identify the current holders of the remaining debts and to promptly pay them once that is done. His current financial situation is strong and he should have no problem doing so. Mitigation has been adequately established. Clearance is granted.

CASENO: 06-25045.h1

DATE: 08/20/2007

DATE: August 20, 2007

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In Re:)	
)	
-----)	ISCR Case No. 06-25045
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
BARRY M. SAX**

APPEARANCES

FOR GOVERNMENT

Jennifer I. Goldstein, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial problems began in 1996. Substantial Federal and state tax liens were satisfied several years ago. Other delinquent debts have been substantially paid off. Applicant is seeking to identify the current holders of the remaining debts and to promptly pay them once that is done. His current financial situation is strong and he should have no problem doing so. Mitigation has been adequately established. Clearance is granted.

STATEMENT OF THE CASE

On February 20, 2007, 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 8, 2007, 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 originally assigned to another Administrative Judge, but was reassigned to me on June 11, 2007. I issued a Notice of Hearing on June 18, 2007 and the hearing was conducted on July 23, 2007. At the hearing, Department Counsel introduced four (4) exhibits (Government's Exhibits (GX) 1-4. Applicant testified and introduced nineteen (19) exhibits (Applicant's Exhibits (AX) A-S). The hearing transcript was received at DOHA on August 1, 2007.

FINDINGS OF FACT

Applicant is a 66-year-old employee of a defense contractor. The SOR contains eight (8) allegations under Guideline F (Financial Considerations). In his response to the SOR, Applicant admits allegation 1.d. and denies all other allegations. All specific admissions are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence, I make the following FINDINGS OF FACT as to the status of each SOR allegation.

The February 20, 2007 SOR alleges the following:

1.a. Applicant was indebted to the Internal Revenue Service (IRS) in the amount of \$61,493.00 on a Federal tax lien entered against him on or about October 2000. In his response, Applicant denies this allegation and claims the actual value of the lien was \$43,775.46. He made payments on this debt, as part of an agreement reached on his behalf by a "tax representative" (Tr at 41,42). Applicant states that this debt was paid off during the escrow process when the house was sold on April 27, 2006 (Response and Tr at 38-42). The escrow documents from April 2006) corroborate that this debt has been satisfied and the Federal tax lien released (AX A and AX B).

1.b. Applicant was indebted to State B in the approximate amount of \$25,933.00 on a state tax lien entered against him in March 2000 (AX D). Applicant denies this allegation and claims the tax lien was settled in November 2005, when the total taxes due were paid off during the escrow process when the house was sold on April 27, 2006 (Response and Tr at 41-44). The attached copy of the escrow document corroborates that this debt has been satisfied (AX A and AX D).

1.c. Applicant was indebted to Bank C in the approximate amount of \$281.00 on an account more than 120 days past due as of July 2006. Applicant denies this allegation and claims the \$281.00 was part of a larger amount of \$9,540.00 owed to this creditor that was paid off during the escrow process when his house was sold on April 27, 2006 (Tr at 45, 46). The attached copy of the escrow document corroborates that this debt has been satisfied (AX A and AX E).

1.d. Applicant was indebted to Creditor D in the approximate amount of \$2,006.00 on an account charged off in about 2003. He has had some difficulty tracking down the present holder of the debt (Tr at 45). In his response to the SOR, Applicant admits this debt and states he will pay off the debt as soon as he is able to locate the present holder of the debt.

1.e. Applicant was indebted to Creditor E in the approximate amount of \$3,402.00 on an account placed for collection in about July 2003. In his response, Applicant denies the debt. He disputes the debt. He states that the creditor has initiated legal action, to which Applicant was responding as of March 8, 2007, claiming improper conduct by the creditor (Tr at 50, 51). He promises a payoff with 30 days of resolution.

1.f. Applicant was indebted to Creditor F (same creditor as in 1.e., above) in the approximate amount of \$10,619.00 on an account placed for collection in about July 2003. In his response, Applicant denies the debt. He states that the creditor has initiated legal action, to which Applicant was responding as of March 8, 2007, claiming improper conduct by the creditor (Tr at 50, 51). He promises a payoff with 30 days of resolution.

1.g. Applicant was indebted to Creditor G in the approximate amount of \$157.00 on

an account placed for collection in about January 2004. In his response, Applicant denied this debt, claiming it did not exist. He has been attempting to locate the present holder of the debt and promises a prompt payoff when he learns the debt is valid and owing.

1.h. Applicant was indebted to Bank H in the approximate amount of \$6,551.00 on an account placed for collection in about January 2004. In his response, Applicant denied this debt. He believed it may be “an earlier duplicate of the debt(s) [cited in 1.e. and 1.f., above]. He stated that “if not, I will contact the debt holder and pay off the debt in 30 to 60 days” (Response). He states that the creditor has initiated legal action, to which Applicant responded, as of March 8, 2007, claiming improper conduct by the creditor (Tr at 50, 51). He promises a full payoff with 30 days of resolution.

Applicant’s overall debt was incurred during the period from August 1996 to August 2003, during which time Applicant was employed for only about 30 months (Tr at 32). The total of the debts alleged in the SOR is about \$110,442.00, but he also owed money on other debts, and has paid off about \$119,000 over the past few years (Response to SOR). Even before he sold his house and paid off the balance of his debts, he had reached an agreement with State B and had begun to make payments on his state tax debt (Tr at 33). His intent has been to prioritize his debts, but to resolve all of them eventually. He served in the U.S. military for 20 years and has had no legal or financial problems except for those involved in the present case (Tr at 34). Through all of this, he has been caring for an adult son who had serious medical problems and subsequently passed away (Tr at 35).

His current take home pay is about \$3,200.00 per month (Tr at 64). He also receives military retirement of about \$2,500 per month and \$1,800 in social security (Tr at 64). His wife received disability payments from Social Security of about “\$600/\$700 per month” and a pension of about \$400.00 per month (Tr at 65).

Applicant believes his present delinquent debt is “maybe \$20,00.00” (Tr at 56) and involve debts he is disputing or where he has been unable to contact the debt holder, who are apparently several layers away from the original creditor (Tr at 54-58). The record shows Applicant to be a man of integrity. He has demonstrated a willingness and ability to resolve all remaining delinquent debts (Tr at 58).

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, 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

The Concern: Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor judgment, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Disqualifying Conditions: 19.(a) inability or unwillingness to satisfy debts; and (c) a history of not meeting financial obligations.

Mitigating Conditions: 20.(b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, . . . unexpected medical emergency or death) and the individual acted responsibly under the circumstances; 20. (c)

there are clear indications that the problem is being resolved or is under control; and 20.(d) the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems substantially occurred during a seven-year period of on and off employment between 1993 and 2003, and the terminal illness of his son (Tr at 74). The total amount cited in the SOR is about \$110,000.00, and Applicant has incurred other debts as well. Several years ago, he sold his house and used the proceeds to pay off specific debts cited in the escrow documents, substantially reducing his delinquent debt load. As discussed above, his current monthly income is more than \$6,500.00 per month. His house payments are about \$1,200 per month. After his monthly operating expenses, as discussed in his hearing testimony (Tr at 65-69), he has a positive balance. In his bank account, he has about \$70,000.00, the remainder from the sale of his home (Tr at 70). He also has about \$64,00.00 in a 401K plan and about \$95,000.00 equity in his new home (Tr at 71).

Applicant could have done some things better, and moved faster on resolving all of the cited debts, but he has made significant inroads into his overall debts and has taken steps to identify and contact the creditors whose debts have not yet been satisfied. Applicant is a persistent man, perhaps even stubborn, but the record does not suggest any unwillingness or inability to resolve his debts. He has stated his intent to resolve all debts once he can locate and negotiate with the current holder of each remaining debt.

Clearly, he has the ability to do so. Applicant has paid some \$70,000 in tax liens even though he thought the liens were unfair. As to those debts not yet paid, I conclude that Applicant has not yet done so because he has not satisfied himself as to the actual amount owed or the current holders of the debts. While he could have done more, perfection is not the standard. Overall, he has demonstrated a strong personal ethic (responsibilities to his family and work). There were no apparent problems when he had the cited debts, which makes the level of risk even smaller, now that he has significantly reduced those debts and has sizeable financial assets as well.

In summary, I conclude that Applicant has adequately demonstrated financial rehabilitation and mitigated the Government's concerns. Accordingly, I conclude that Applicant possesses the judgment, reliability, and trustworthiness required of someone seeking to hold a DOD security clearance.

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

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**