

DATE: October 31, 2007

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In Re: )  
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 ----- ) ISCR Case No. 06-23362  
 SSN: ----- )  
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 Applicant for Security Clearance )  
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**DECISION OF ADMINISTRATIVE JUDGE  
DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Department Counsel

**FOR APPLICANT**

Alan V. Edmunds, Attorney At Law

**SYNOPSIS**

Applicant's delinquent financial indebtedness, partially caused by episodes of poor judgment and partially caused by circumstances beyond his control, is currently being paid through Chapter 13 Bankruptcy. He has made a good faith effort to resolve his indebtedness and has shown that he is now financially responsible. Clearance is granted.

## STATEMENT OF THE CASE

On April 26, 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, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The Applicant responded to the SOR in writing on May 19, 2007, and requested a hearing before DOHA Administrative Judge. This case was assigned to the undersigned on July 11, 2007. A notice of hearing was issued on August 15, 2007, scheduling the hearing for September 26, 2007. At the hearing the Government presented fourteen exhibits. The Applicant presented seventeen exhibits, sixteen of which were admitted into evidence and are referred to as Applicant's Exhibits A through P. The Applicant also testified on his own behalf. The official transcript (Tr.) was received on October 4, 2007.

## FINDINGS OF FACT

The Applicant is 46 years old and married. He is employed by a defense contractor as a Project Lead on a Transformational Satellite Program and is seeking to obtain a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline F - Financial Considerations) The Government alleges that the Applicant is ineligible for clearance because he is financially overextended and at risk to engage in illegal acts to generate funds.

Upon graduating from the United States Air Force Academy in May 1985, the Applicant got married. Marital problems ensued, and in 1987, the Applicant and his wife divorced. In 1989, after confusion concerning whether his divorce was legally valid, the Applicant, who at the time was an officer in the Air Force, was charged with two counts of knowingly obtaining services he was not entitled to. In lieu of court martial, the Applicant resigned his commission and received an Other than Honorable Discharge. Following this, the Applicant was unemployed for a time which caused financial difficulties.

In 1990, the Applicant was still trying to financially recover from his previous divorce. His ex-wife had spent money without considering the consequences, and purchased things they really

could not afford and did not need. She did not pay their bills on time; and as a result, the Applicant was deeply indebted. Following the divorce, the Applicant absorbed all of the debt from the marriage and the divorce expenses.

By 1992, the Applicant had recovered from the debt he incurred during his first marriage. In February 1988, the Applicant remarried and they had a daughter. By 1994, the Applicant had determined that there was something wrong with his daughter. The Applicant explained that his daughter's medical bills caused him to fall behind on his other bills and he was forced to resort to bankruptcy. He explained that when his daughter was fourteen months old, she was over-medicated by her pediatrician. This caused severe and permanent nerve damage to her ear and she lost her hearing. (Tr. p. 54). It was determined that she needed surgery that would entail a cochlear implant. His daughter had the surgery which cost the Applicant \$2,000.00 out of pocket. The Applicant also explained that in order to maintain the implant, batteries cost about \$50.00 a week that must be provided on a daily basis for the implant to work. The implant must to be replaced every two to three years. It was also about this time, between 2003/2004, the Applicant learned that his mother had cancer and he did everything he could to help her and spend time with her before she died. Already in financial straits, he accumulated more debt.

On June 23, 1995, the Applicant filed for bankruptcy under Chapter 7 of the Bankruptcy Code. He listed assets of \$5,765.00 and total liabilities of \$56,909.00. On October 13, 1995, the Applicant's debts were discharged. (*See* Government Exhibits 9 and 10).

Following his Chapter 7 bankruptcy, the Applicant was debt free. In 1996, the Applicant's employment contract expired and his employer gave him the option of being laid off or taking a 25% pay reduction and move to Florida. The Applicant took the pay reduction and move. It was also about this time that he and his wife had two more children and their living expenses increased. Just after moving to Florida and purchasing a house, the Applicant was offered a permanent job in California. He moved back to California with his family and took the job. The house in Florida sat vacant for three months before he could sell it, but he continued to pay the mortgage on it while still paying his living expenses in California. This caused additional financial difficulties.

On March 30, 2006, the Applicant filed for bankruptcy protection under Chapter 13 of the Bankruptcy Code. At that time he listed total liabilities of \$293,148.00 and total assets of \$37,533.00. On November 6, 2006, the Chapter 13 was dismissed for failing to comply with the trustee's payment plan. The Applicant explained that his son in high school pulled a prank at school and was arrested. To get him out of juvenile hall, the Applicant paid the costs of bail and legal fees to represent his son. In total these expenses cost the Applicant as much as \$25,000.00. (*See* Applicant's Exhibit H and Tr. p. 59).

The Applicant admits each of the allegations in the SOR that includes indebtedness to twenty different creditors for a total of between \$60,000 and 70,000. (*See* Government Exhibits 3, 4 and 5, Applicant's Answer to SOR, and Tr. p. 71).

The Applicant re-filed on January 12, 2007, for bankruptcy protection under Chapter 13 of

the Bankruptcy Code. The Applicant testified and the documentation substantiates that the Chapter 13 bankruptcy plan includes each of the creditors listed in the SOR. (*See Applicant's Exhibit O and Tr. p. 45*). He plans to resolve each of these debts through the Chapter 13. The plan requires that he pay \$1,700.00 a month to the bankruptcy trustee to be distributed to his creditors. These funds are automatically deducted out of his payroll check. Presently, the Applicant has paid approximately \$6,100.00 towards the plan since he started it in March 2007. He plans to continue with the program until his debts are paid in full. The plan schedule indicates that it will take three to five years to pay all of the Applicant's debts, with 100 percent being paid to unsecured creditors. (*See Applicant's Answer to SOR and attachments that include Chapter 13 Petition, Schedules and Plan*).

On January 17, 2007, the Applicant received Consumer Credit Counseling as required by law when filing Chapter 13 Bankruptcy. (*See Applicant's Exhibit N*)

In June 2004, the Applicant was employed by another defense contractor. From 2003 through 2004, he misused the corporate credit card by using it for personal expenses. To afford to travel to visit his mother while she was ill, the Applicant used his corporate credit card for airplane tickets, gas and other related expenses. He is indebted in the amount of \$6,000.00. He was terminated by this defense contractor for this misconduct.

The Applicant was unemployed for four to five months before he got another job with a defense contractor. During this period, his wife was also unemployed and he withdrew money from his retirement account to help cover their living expenses. He was so desperate for money and the desire to spend time with his mother that he again started using his corporate credit card for personal expenses. In 2005, the Applicant was counseled by his employer for using his corporate credit card for personal expenses; and told that if he were ever to do it again, he would be terminated from employment.

Numerous letters of recommendation from the Applicant's superiors, coworkers and friends some of who know the Applicant during his time at the Air Force Academy attest to the Applicant's sense of integrity, honesty, reliability, loyalty to the United States, positive attitude, and maturity. They say that his character is simply beyond reproach. He is considered to be a hard worker and team player with a strong commitment to the Department of Defense. He is said to be an invaluable asset to the program and an outstanding individual in every way. The Applicant is highly recommended for a position of trust. (*See Applicant's Exhibits A, B, C, D, E, F, J and K*).

The Applicant currently earns \$110,000 annually and his income comfortably covers his bills and expenses.

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

## Guideline F (Financial Considerations)

18. *The Concern.* Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, 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.

### Conditions that could raise a security concern:

19(a) inability or unwillingness to satisfy debts;

19(c) a history of not meeting financial obligation;

19(e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ration, and/or other financial analysis.

### Conditions that could mitigate security concerns:

20(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual has acted responsibly under the circumstances;

20(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation

- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination.” The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

### CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in instances of financial irresponsibility which demonstrates poor judgment or unreliability.

It is the Government’s responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant’s conduct and the holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government’s case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant his a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has been

financially irresponsible (Guideline F). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

Considering all of the evidence, the Applicant has introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case. With respect to his finances, the Applicant poor financial history was partially caused by episodes of poor judgment and poor financial management as well as circumstances beyond his control, namely his daughter's medical condition, his son's unexpected legal fees, his mother's death, and his job transfer and pay reduction. In regard to the debts listed in the SOR, each of them has now been included in a payment plan under Chapter 13 of the Bankruptcy Code. The Applicant has been making payments toward these debts for about six months and will continue to follow the requirements of the payment plan for the next three to five years or until he is debt free. He has also received credit counseling that will assist him in maintaining his budget. Under the circumstances, he has made a good faith effort to resolve his indebtedness, and there is evidence of financial rehabilitation. The Applicant has demonstrated that he can properly handle his financial affairs.

In the event that the Applicant does not continue to follow the trustee's plan under the Chapter 13 and pay off his debts accordingly, his security clearance will once again be in immediate jeopardy. Furthermore, the Applicant understands the policy prohibiting the use of corporate or government credit cards for personal use. He will never ever use his corporate credit card for personal expenses under any circumstances, unless it is specifically authorized. Under Guideline F (Financial Considerations), *Disqualifying Conditions 19(a) inability or unwillingness to satisfy debts; 19(c) a history of not meeting financial obligation; 19(e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis* apply. *Mitigating Conditions 20(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual has acted responsibly under the circumstances, 20(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control and 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* also apply. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

On balance, it is concluded that the Applicant has overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 for the Government's Statement of Reasons.

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## **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1 For the Applicant.

- Subpara. 1.a.: For the Applicant.
- Subpara. 1.b: For the Applicant.
- Subpara. 1.c: For the Applicant.
- Subpara. 1.d: For the Applicant.
- Subpara. 1.e: For the Applicant.
- Subpara. 1.f: For the Applicant.
- Subpara. 1.g: For the Applicant.
- Subpara. 1.h: For the Applicant.
- Subpara. 1.i: For the Applicant.
- Subpara. 1.j: For the Applicant.
- Subpara. 1.k: For the Applicant.
- Subpara. 1.l: For the Applicant.
- Subpara. 1.m: For the Applicant.
- Subpara. 1.n: For the Applicant.
- Subpara. 1.o: For the Applicant.
- Subpara. 1.p: For the Applicant.
- Subpara. 1.q: For the Applicant.
- Subpara. 1.r: For the Applicant.
- Subpara. 1.s: For the Applicant.
- Subpara. 1.t: For the Applicant.
- Subpara. 1.u: For the Applicant.
- Subpara. 1.v: For the Applicant.
- Subpara. 1.w: For the Applicant.
- Subpara. 1.x: For the Applicant.
- Subpara. 1.y: 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 the Applicant.

Darlene Lokey Anderson

## Administrative Judge