

KEYWORD: Financial

DIGEST: Applicant's excessive indebtedness cause by the real estate market downturn and poor business management has not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

CASENO: 02-09273.h1

DATE: 10/16/2002

DATE: October 16, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-09273

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Erin C. Hogan, Department Counsel

**FOR APPLICANT**

**SYNOPSIS**

Applicant's excessive indebtedness caused by the real estate market downturn and poor business management has not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

**STATEMENT OF THE CASE**

On May 17, 2002, 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 his clearance should be denied or revoked.

The Applicant responded to the SOR in writing on May 23, 2002, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on July 16, 2002. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on August 1, 2002, and he submitted no reply. The case was assigned to the undersigned for resolution on September 24, 2002.

**FINDINGS OF FACT**

The Applicant is 51 years old. He is a Junior Research Scientist, and is applying for a Secret level 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.

The Applicant worked as a self-employed land surveyor from 1984 until 1999. From 1984 until 1989, his business was profitable. In 1989, two of his clients failed to pay their accounts, which amounted to approximately \$10,000.00. The Applicant was unable to collect the money from the clients, as both had filed bankruptcy. In 1991, the Applicant's business experienced a fifty percent decrease in the real estate market, which significantly impacted the need for land surveyors. Banking policies regarding the refinancing of mortgages changed, and the Applicant's business further declined. By 1995, the closure of a local air force base caused the local real estate market to come to a standstill.

The Applicant also believes that his poor skills as a business manager contributed to his financial difficulties. He states that he underestimated some survey jobs in order to win the contracts, and as a result he had difficulty meeting payroll and satisfying federal and state tax obligations. The Applicant indicates that during the decline of his business, his money went first to provide support to his family which consists of his wife and seven children, and then to satisfy his business debts.

As a direct result of the real estate business downturn and the poor business management style that negatively impacted the Applicant's income, he acquired many delinquent debts, totaling in excess of \$100,000.00. The Applicant admits to all of the delinquent debts referred to in the SOR. (*See*, Item 4 of FORM). Presently, the Applicant's current income that is supplemented by food stamps, is sufficient to provide for his wife and seven children, but, there is little or no money left to pay his past due debts. The following debts set forth in the SOR remain outstanding:

Subparagraph 1.a., is a debt to a bank in the amount of \$44,248.98 for the deficiency balance due after the foreclosure of his home and subsequent auction in February 1995. (*See*, Items 4 and 6 of FORM).

Subparagraphs 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., 1.k., 1.l., 1.m., 1.n., 1.o., 1.p., 1.q., 1.r., 1.s., 1.t., and 1.u., are unsatisfied federal tax liens entered against him by the Internal Revenue Service totaling a combined amount in excess of \$65,000.00. (*See*, Item 11 of FORM).

Subparagraphs 1.v., 1.w., 1.x., 1.y., 1.z. and 1.aa., are judgments filed against him by the state commissioner of tax and finance totaling in excess of \$8,500.00. (*See*, Items 4 and 6 of FORM). The Applicant contends that he has paid the tax

debts set forth in subparagraphs 1.z., and 1.aa, but he has provided no documentary evidence to support this.

Subparagraphs 1.bb., and 1.dd., are miscellaneous debts totaling approximately \$667.00 that the Applicant also claims that he has paid, but he has provided no documentary evidence to support this. (*See*, Item 4 of FORM). With regard to subparagraph 1.cc., a collection account, the Applicant indicates that it is no longer an active account and has been written off. (*See*, Items 4 and 6 of FORM).

The Applicant's personal financial statement dated August 3, 1999, indicates that his monthly expenses exceed his monthly income. (*See*, Item 6 of FORM).

### **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)

##### Conditions that could raise a security concern:

1. A history of not meeting financial obligations;
3. Inability or unwillingness to satisfy debts.

##### Condition that could mitigate security concerns include:

3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business turnaround, unexpected medical emergency, or a death, divorce or separation).

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 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 continued 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 him or her a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has excessive indebtedness (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 not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

Admittedly, since 1989, the Applicant has experienced a rough period with his business, significantly impacted by the real estate market downturn in his hometown. This unforeseen unfortunate circumstance resulted in him accumulating enormous debts. His poor business management skills did not help the situation.

A business downturn is a condition that could under some circumstances mitigate security concerns as to why he accumulated the debt. Now the question is, what has he done about the debt? In this case, the Applicant remains under extreme financial duress. Based upon his current income, he cannot afford to pay his delinquent debts. His current income supplemented with food stamps to provide for his family is still not enough to allow him to pay off his past due indebtedness. There is no plan or method he has established to accomplish the task of paying his past debts. The fact is that the Applicant remains delinquent as to each of the creditors listed in the SOR, except allegations 1.z., 1.aa., 1.bb., 1.cc., and 1.dd which he says he has paid. The total amount owed remains well in excess of \$100,000.00.

The Applicant has a long road ahead to reduce his indebtedness. Given this uncertainty and the size of his outstanding indebtedness, the risk is too great that he could engage in illegal acts that could jeopardize the national security. There is no evidence in mitigation that would negate the negative impact his financial situation has on his security worthiness. At this time, I cannot find that it is clearly consistent with the national interest to grant the Applicant a security clearance. Accordingly, Guideline F, Financial Considerations, is found against the Applicant.

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

## **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: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.  
Subpara. 1.d.: Against the Applicant.  
Subpara. 1.e.: Against the Applicant.  
Subpara. 1.f.: Against the Applicant.  
Subpara. 1.g.: Against the Applicant.  
Subpara. 1.h.: Against the Applicant.  
Subpara. 1.i.: Against the Applicant.  
Subpara. 1.j.: Against the Applicant.  
Subpara. 1.k.: Against the Applicant.  
Subpara. 1.l.: Against the Applicant.  
Subpara. 1.m.: Against the Applicant.  
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Subpara. 1.t.: Against the Applicant.  
Subpara. 1.u.: Against the Applicant.  
Subpara. 1.v.: Against the Applicant.  
Subpara. 1.w.: Against the Applicant.  
Subpara. 1.x.: Against the Applicant.  
Subpara. 1.y.: Against the Applicant.  
Subpara. 1.z.: Against the Applicant.  
Subpara. 1.aa.: Against the Applicant.  
Subpara. 1.bb.: Against the Applicant.  
Subpara. 1.cc.: Against the Applicant.  
Subpara. 1.dd.: Against the Applicant.  
Subpara. 1.ee.: 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 the Applicant.

DARLENE LOKEY ANDERSON

Administrative Judge