

DATE: February 20, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-02302

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Martin H. Mogul, Department Counsel

**FOR APPLICANT**

*Pro Se*

**STATEMENT OF THE CASE**

On October 15, 2001, 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 November 5, 2001, 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 December 19, 2001. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on January 3, 2002, and he submitted no reply.

The case was assigned to the undersigned for resolution on February 7, 2002.

**FINDINGS OF FACT**

The Applicant is 31 years old. He is employed by a defense contractor and is applying for a security clearance in connection with his employment.

The Government opposes the Applicant's request for a continued 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.

From October 1989 to September 1995, the Applicant was unemployed due to a job lay-off. During this period, the Applicant fell behind on his monthly debts. His wife filed for divorce. The divorce was finalized in March 1995. The Applicant remarried, and his new spouse also had many debts. Among other bills he assumed from his first marriage, the Applicant could not afford to pay the court ordered child support. In June 1996, the Applicant filed for Chapter 13 bankruptcy. (See, Government Exhibit 9).

The Applicant began making payments to the bankruptcy trustee, as agreed, in the amount of \$128.00 per month. These payments continued for an unknown period. The Applicant eventually fell behind on these payments because he started making payments to another creditor in the amount of \$700.00 per month until it was paid off in October 2000. The Applicant states that when he fell behind on his payments to the bankruptcy trustee, he contacted his attorney who advised him to voluntarily dismiss the bankruptcy since most his debts had been paid. He states that in February 2001, he voluntarily dismissed his Chapter 13. He has not made any payments to those remaining creditors since February 2001, because his attorney told him that most of his debts had been paid in full. The Applicant states that he plans on contacting the bankruptcy court to determine which debts he still owes. (Government Exhibit 7).

The Applicant feels that he is responsible and accountable for his financial obligations, and he intends to satisfy all of his debts, if he is able to do so. He has recently been promoted which has allowed him to increase his payments on some of his monthly financial obligations. His goal is to pay all of his back taxes to the Internal Revenue Service and to the State, and then to pay his bankruptcy creditors. (See, Government Exhibit 7).

Subparagraph 1(b) The Applicant is indebted to a State Tax Commission in the amount of approximately \$3,300.00 (including accrued interest and penalties), for the balance owed on his state income tax obligation for tax year 1986. A state tax lien was filed in October 1992, and judgment was issued in October 1992 and December 1995. This debt is still outstanding. Due to financial hardship, the Applicant has been unable to pay this debt. The Applicant plans to pay the creditor as soon as he is able. (See, Government Exhibit 7 and Applicant's Answer to SOR).

Subparagraph 1(c) The Applicant is indebted to a State Tax Commission in the amount of \$2,800.00 (including accrued interest and penalties), for the balance owed on his state income tax obligation for tax year 1987. A state tax lien was filed on this debt in October 1992, and judgment was issued in October 1992 and December 1995. This debt remains outstanding. Due to financial hardship, the Applicant has been unable to pay this debt. The Applicant plans to pay the debt as soon as he is able. (See, Government Exhibits 7 and Applicant's Answer to SOR).

Subparagraph 1(d) The Applicant is indebted to a State Tax Commission in the amount of \$2,400.00 (including accrued interest and penalties), for the balanced owed on his state income tax obligation for tax year 1988. A state tax lien was filed on this debt in October 1992, and judgment was issued in October 1992 and December 1995. This debt remains outstanding. Due to financial hardship, the Applicant has been unable to pay this debt. The Applicant plans to pay this debt as soon as he is able. (See, Government Exhibits 7 and Applicant's Answer to SOR).

Subparagraph 1(e) The Applicant is indebted for a state educational loan in the amount of \$3,077.00 (including accrued interest). A judgment was issued in arch 1994 for his failure to pay. This debt is still outstanding.

Subparagraph 1(f) The Applicant is indebted for a state educational loan in the amount of \$9,200.00 (including accrued interest). A judgment was issued in June 1993 for his failure to pay. This debt is still outstanding.

Subparagraph 1(g) The Applicant is indebted to a dentist in the amount of \$100.00 for a bad debt since October 1993. This debt is still outstanding.

Subparagraph 1(h) The Applicant is indebted to a medical office in the amount of \$35.00 for a bad debt since January 1995. This debt is still outstanding.

Subparagraph 1(I) The Applicant is indebted to a gas company in the amount of \$600.00 for a delinquent debt since June 1998. This debt is still outstanding.

Subparagraph 1(j) The Applicant is indebted to a dentist in the amount of \$3,900.00 for a delinquent debt since August

1998. The debt is still outstanding.

The personal financial statement of the Applicant dated August 1999, indicates that he has a monthly net remainder of minus \$109.00, after his expenses. (*See*, Government Exhibit 5).

### 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.

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

None.

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 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 not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

Admittedly, the Applicant went through a rough period in his life from 1988 until October 1995. During that period, he was unemployed, could not find a job, and went through a divorce. In October 1995, he was hired by his current employer. In June 1996, he filed a Chapter 13 bankruptcy, and apparently, began to pay off some of his debt. It is unclear why he stopped paying his creditors. Whether the court dismissed the Chapter 13 for Applicant's failure to make timely payments to the trustee, or because the Applicant himself voluntarily dismissed the petition, makes little difference. The fact is that the Applicant remains delinquent to each of the creditors listed in the SOR. The Applicant has either been unwilling or unable to satisfy his past overdue debts. His stated intention to pay his creditors is laudable, however, since his Chapter 13 was dismissed, he has not shown a systematic pattern of payment towards reaching this goal. The total amount owed remains in excess of \$25,000.00.

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. Furthermore, the Applicant has failed to submit a reply to the FORM, and has not provided this Administrative Judge with any 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.

**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