

DATE: May 14, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-04716

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Department Counsel

**FOR APPLICANT**

A. Stephen Rocha, Esquire

**SYNOPSIS**

Applicant's excessive child support indebtedness and omissions on his security clearance application regarding the debt have not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

**STATEMENT OF THE CASE**

On September 28, 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, 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 October 17, 2001, and requested a hearing before a DOHA Administrative Judge. This case was transferred to the undersigned on January 30, 2002. A notice of hearing was issued on February 11, 2002. The hearing was held on March 5, 2002, at which the Government presented four exhibits. The Applicant presented ten exhibits. The Applicant called four witnesses and testified on his own behalf. The official transcript (Tr.) was received on April 25, 2002.

**FINDINGS OF FACT**

The Applicant is 53 years old, married, and he has a bachelors degree in Electronics. He is employed by a defense contractor as a Laboratory Manager, and is seeking to obtain or retain 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.

The Applicant is indebted to the Department of Child Support Services in the amount of \$52,555.00 for delinquent child support payments since 1992. As of February 2000, the debt had not been satisfied.

The Applicant explained that in 1977, at the time of his divorce, the court ordered that he pay his child support in the amount of \$400.00 a month. During the years to follow, the Applicant was laid off on a number of occasions, sometimes for as long as six months. During those periods, he was unable to make the child support payments. He gradually began to fall farther and farther behind, as the amount he owed continued to accumulate.

Since 1986, the Applicant's wages have been garnished by three of his previous four employers to pay his child support obligation. The Applicant contends that although he has not always been able to afford to pay the child support, he has sent money to his ex-spouse and children when he had some to send.

In 1990, the Applicant's high school children, who had always resided with his ex-spouse, came to live with the Applicant. After a year, the Applicant's son returned to live with his mother, but his daughter continued to live with the Applicant until she went to college. Since then, the Applicant has continued to provide all of her financial support. During this period, he was also paying his child support obligation, without any modification to the initial agreement.

Since September 2001, the Applicant's wages have been garnished in the amount of \$500.00 a month. (Tr. p. 78). The Applicant has recently hired an attorney who is demanding an accounting to determine the exact amount of child support still owed by the Applicant. The Applicant contends that the exact amount he owes is unclear, given the fact that each year his income tax refunds are withheld for payment, and that no adjustment has been made for the years his daughter was living with him. Whatever the amount determined to be owed, the Applicant intends to continue to pay the debt, until it is completely paid off.

The Applicant has also hired a Consumer Credit Counseling Service to consolidate his other bills to be better able to manage his debt. (Tr. p. 50). The Applicant indicates that the payment schedule he follows enables him to stay current on all of his other financial obligations. The Applicant also indicates that he is up for a promotion that will include about a \$10,000.00 raise per annum.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

The Applicant completed a Questionnaire for National Security Positions (Standard Form 86) dated August 23, 1999. In response to question 28 which asked, "In the last seven years, have you been over 180 days delinquent on any debts?" the Applicant answered "NO." (See, Government Exhibit 1, Question 28). This was a false answer. The Applicant stated that when he answered the question, he did not consider the child support to be a debt, like a car payment or a mortgage or credit cards. He simply mis-characterized the child support debt. He had no intention of concealing the information, as he in fact revealed it in response to another question on the application. (See, Government Exhibit 1, Question 27(b).)

The same application asked, "Are you currently over 90 days delinquent on any debts?" The Applicant answered "NO". (See, Government Exhibit 1, Question 28(b).) This was a false answer. Again, the Applicant did not consider his child support to be a regular bill. Since he was current on all of his other monthly financial obligations he answered "NO." He made a mistake. Again, he had no intention to conceal the information concerning his child support delinquency, as he in fact revealed it in response to another question on the application. (See, Government Exhibit 1, Question 27(b).)

### Mitigation.

The Applicant's past and current supervisors, and a company security manager, each testified that the Applicant is extremely reliable and trustworthy, and essentially nothing short of exemplary on the job.

The Applicant's daughter testified that she has lived with her father from the age of fourteen until she went to college in 1994.

## 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 downturn, unexpected medical emergency, or a death, divorce or separation).

### Guideline E (Personal Conduct)

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

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or statute, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

#### Conditions that could mitigate security concerns:

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 instances of financial irresponsibility and dishonesty 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 a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has excessive child support indebtedness (Guideline F); and that this information was not revealed in response to two questions on his security clearance application (Guideline E). 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.

The evidence shows that over the past twenty-five years, since his divorce in 1977, the Applicant has experienced periods of unemployment and under employment that has contributed to his current excessive child support arrearage. However, there were other occasions where he was gainfully employed and his child support obligation was not paid until a garnishment action was implemented. Three out of his past four employers have had to garnish his wages to pay his child support arrearage. Unfortunately, however, this indebtedness has grown over time to become so excessive that it now poses a significant security risk.

The Applicant is now gainfully employed and is paying his child support obligation through a garnishment in the amount of approximately \$500.00 a month. Hopefully, he will continue to pay this debt until it is paid off, which will take a significant amount of time. At the present time, he has not demonstrated that he is trustworthy and meets the eligibility requirements for access to classified information. Accordingly, Guideline F (Financial Considerations) is found against the Applicant.

I have considered the Applicant's excuses for failing to list his child support as a debt on his security clearance application of August 23, 1999, in response to questions 28 and 28(b). The Applicant clearly admitted the child support indebtedness in response to another question on the application, specifically question 27(b), which explains that he had no intent to conceal the information. I find his explanation credible and believable. Consequently, the evidence proves that the Applicant has not been dishonest with the Government regarding his financial history. I find that the Applicant did not deliberately conceal information from the Government. Accordingly, I find for the Applicant under Guideline E (Personal Conduct).

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.

Paragraph 2: For the Applicant.

Subpara. 2.a.: For the Applicant.

Subpara. 2.b.: For 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

DATE: May 14, 2002

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In Re:

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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**

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**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