

DATE: November 24, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-30267

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's excessive financial indebtedness, brought on by a divorce and an inability to find full time employment that paid more than minimum wage, has not been mitigated by sufficient evidence of reform and rehabilitation. Her attempt to falsify her security clearance application by concealing her derogatory financial history has also not been mitigated. Clearance is denied.

**STATEMENT OF THE CASE**

On February 13, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on March 8, 2003, in which she 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 8, 2003. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on July 19, 2003. On August 25, 2003, she requested additional time in which to submit her response. She was granted additional time to submit her response and submitted a response dated September 5, 2003.

The case was assigned to the undersigned for resolution on August 20, 2003.

**FINDINGS OF FACT**

The Applicant is a 41 years old and is not married. She is employed by a defense contractor as a Per Diem Specialist

and is seeking to obtain a security clearance in connection with her 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 she is financially overextended and at risk to engage in illegal acts to generate funds.

The Applicant admits to financial difficulties in the past based upon a divorce she was going through, and difficulties in finding a full time job that paid more than minimum wage. This situation brought on indebtedness that she did not expect. As a result, she remains indebted to sixteen separate creditors set forth in the SOR under allegations 1.(a), through 1.(q). (*See*, Government Exhibit 3). The Applicant filed for Bankruptcy under Chapter 13 in February 2000, at which time her total liabilities amounted to \$39,584.23. Her case was ultimately dismissed in May 2001, because she failed to make regular payments according to the bankruptcy plan. (*See*, Government Exhibit 8). The three creditors listed in allegations 1.(o), 1.(p), and 1.(q), have obtained court judgments against the Applicant, collectively totaling approximately \$1,700.00. (*See*, Government Exhibits 9, 10 and 11).

The Applicant explains that she provides support for and is the mother of three children, two of whom are currently attending college. The Applicant indicates that in September 2003, she is scheduled to meet with an attorney concerning her financial situation and she intends on filing a Chapter 7 bankruptcy. She states that she plans on clearing up her financial matters. (*See*, Applicant's Response to the FORM dated September 5, 2003).

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

The Applicant completed a Questionnaire for National Security Positions (Standard Form 86), dated April 9, 2001. In response to question 33, which asked whether in the last seven years the Applicant had filed under any chapter of the bankruptcy code, the Applicant responded, "NO". This was a false answer. The Applicant had filed for bankruptcy under Chapter 13 on February 4, 2000. This bankruptcy was still pending at the time the Applicant completed the security clearance application.

The same questionnaire, at question 37, asked whether in the last seven years the Applicant had any judgments against her. The Applicant responded, "NO". (*See*, Government Exhibit 4). This was also a false answer. The Applicant had failed to list three unsatisfied judgments that were entered against her. The first judgment was entered against her in December 1999, in the amount of \$629.03. The second judgment was entered against her in December 1999, in the amount of \$405.00 plus court cost of \$72.00. The third judgment was entered against her in January 2000, in the amount of \$716.22 plus \$57.00 court costs. (*See*, Government Exhibits 9,10 and 11).

The same questionnaire, at question 38, asked the Applicant whether in the last seven years she has ever been over 180 days delinquent on any debts. The Applicant responded, "NO". (*See*, Government Exhibit 4). Question 39, on the questionnaire, asked the Applicant if she was currently over 90 days delinquent on any debts. The Applicant responded, "NO". (*See*, Government Exhibit 4). This was also a false answer. The Applicant failed to list her debts that were over 180 days delinquent within the last seven years. She also failed to list the fact that she was currently over 90 days delinquent on paying her debts through a Chapter 13 Bankruptcy plan. A Motion to Dismiss for Failure to Make Regular Payments was filed on September 29, 2000.

The Applicant explained that she did reveal all of her financial situation to the Defense Security Service (DSS) investigator during her interview. She did not believe that the security clearance application could be done properly at work, as she did not have the privacy that she expected. She contends that she was not trying to hide anything from the Government, as she was aware that her credit report would be obtained and the information revealed. (*See*, Applicant's Response to FORM).

## POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the

1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

#### 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:

3. The conditions that resulted in the behavior were largely beyond the persons 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 eligible for a security clearance. 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**

The Government must make out a case under Guideline F (Financial Considerations), and Guideline E (Personal Conduct) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

In this case the Government has met its initial burden of proving that the Applicant has been financially irresponsible (Guideline F), and that she has falsified her security clearance application (Guideline E). 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 her security clearance eligibility.

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations set forth under Guidelines F and E, and they have had a direct impact on her suitability for access to classified information.

The Applicant has admitted each of the sixteen debts listed in the SOR. Applying mitigating condition 3, her divorce and her inability to find a decent paying job could have adversely affected her financial affairs. However, since obtaining her present employment, there has been no good faith effort or a systematic pattern of payment to improve her financial situation. Her Chapter 13 bankruptcy was dismissed in May 2001. Her intentions to meet with an attorney in September 2003, to clear up her financial indebtedness, is a positive one. However, as of the present, the Applicant has either been unable or unwilling to pay her debts, and remains in a position where she poses a potentially serious risk to the national security. At the present time, each of the debts remains outstanding. Accordingly, Guideline F (Financial Considerations) is found against the Applicant.

It is unclear from the record why the Applicant did not reveal her complete financial history in response to questions on her security clearance application. The Applicant appears to be stating that she expected some privacy in the process and did not want to reveal her credit history on the application before talking with a DSS investigator. With the particular evidence that I have been provided, however, there is no reasonable excuse for her failure to answer the questions truthfully. Consequently, the evidence shows that the Applicant has not been completely honest with the Government regarding her financial history. I find that the Applicant deliberately failed to reveal this information to the Government.

The Government relies heavily upon the integrity and honesty of clearance holders. It is a negative factor for security clearance purposes when an Applicant has deliberately provided false information about material aspects of her personal background. This Applicant has not demonstrated that she is trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline E (Personal Conduct).

The Applicant has not provided this Administrative Judge with sufficient evidence in mitigation that would negate the negative impact her falsifications have on her security worthiness. At this time, I cannot find that it is clearly consistent with the national interests to grant the Applicant a security clearance.

## **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.

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: Against the Applicant

Subparagraph 1.l.: Against the Applicant

Subparagraph 1.m.: Against the Applicant

Subparagraph 1.n.: Against the Applicant

Subparagraph 1.o.: Against the Applicant

Subparagraph 1.p.: Against the Applicant

Subparagraph 1.q.: Against the Applicant

Paragraph 2: Against the Applicant.

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

## **DECISION**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

## Administrative Judge