

DATE: February 24, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-16806

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's financial indebtedness brought on by procrastination, not timely filing his income tax returns, and improper tax withholdings, has been mitigated by a good faith effort to resolve his indebtedness. Clearance is granted.

**STATEMENT OF THE CASE**

On July 18, 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 August 28, 2003, and requested a hearing before a DOHA Administrative Judge. This case was originally assigned to another Administrative Judge and scheduled for hearing on December 18, 2003. The matter was continued. It was reassigned to the undersigned on December 19, 2003. A notice of hearing was re-issued on January 13, 2004, scheduling the hearing for January 30, 2004. At the hearing the Government presented eighteen exhibits. The Applicant presented four exhibits and he testified on his own behalf. The record was left open for ten days to provide the Applicant an opportunity to submit additional documentation. The Applicant submitted one Post-Hearing Exhibit consisting of ten pages. The official transcript (Tr.) was received on February 17, 2004.

**FINDINGS OF FACT**

The Applicant is a 47 years old and is not married. He is employed by a defense contractor as a Engineering Technician 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.

The Applicant admits to financial difficulties in the past that were the result of procrastination in not filing his tax returns on time, and for improper tax withholdings. The indebtedness this situation brought on was not expected and quickly grew out of control. For some time, the Applicant felt overwhelmed and was not sure how to resolve his financial situation. As a result, he became indebted to each of the creditors set forth in the SOR under allegations 1.(a), 1.(c), 1.(d), and 1.(e). (*See*, Government Exhibits 1 through 18). Recently the Applicant has made arrangements to pay off each of his outstanding debts. With respect to the Applicant's indebtedness owed in the amount of \$51,647.00 for two federal tax liens, recorded against him on January 3, 2003, he has arranged with the Internal Revenue Service to pay \$215.00 weekly for the next five years, with such payments being automatically withdrawn from his paycheck. (Tr. p. 31-32 and Applicant's Exhibits B and C). The Applicant's indebtedness in the amount of \$2,292.00 for a state tax lien recorded against him on November 17, 1997, has been resolved. (*See*, attachments to Applicant's Answer to SOR). The Applicant has recently hired a credit counseling agency to help him pay off the remaining three creditors. This contract provides that he pay \$119.00 a month toward these creditors until his debts are paid in full. (*See*, Applicant's Exhibits A, D, and Applicant's Post Hearing Exhibit).

The Applicant also realizes that he must be financially responsible in the future. He must file his income tax returns on time and he has changed his income tax withholdings to pay additional taxes up front. After paying his monthly bills, the Applicant normally maintains a checking account with about \$500.00 in it.

## 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:

1. The behavior was not recent;
4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;
6. The individual has 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 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) 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). 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 Guideline F, and it has a direct impact on his suitability for access to classified information.

The Applicant has admitted to all but one of the debts listed in the SOR. The one he did not admit, he has already paid off in full. Obviously, the Applicant was irresponsible for many years by not timely filing his tax returns and not properly handling his financial affairs. However, recently he has made a good faith effort to resolve his financial indebtedness. He has paid off his state tax lien, he has arranged payments with the IRS to pay off his federal tax liens. He has also hired a consumer credit counseling service to help him pay off his past due indebtedness. The Applicant

understands that he must continue a pattern of systematic payments toward each of his outstanding debts to completely resolve his indebtedness in order to maintain his security clearance worthiness. His conduct does indicate substantial steps towards financial rehabilitation. Accordingly, Guideline F (Financial Considerations) is found for the Applicant.

**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.

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

**DECISION**

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge