

DATE: October 14, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-24427

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's delinquent financial history has been mitigated by a good faith effort to resolve his past due indebtedness. His intentional falsifications on his security clearance application concerning his financial history have not been mitigated. Clearance is denied.

**STATEMENT OF THE CASE**

On February 6, 2004, 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 March 1, 2004, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on May 21, 2004. A notice of hearing was issued on June 23, 2004, scheduling the hearing for July 28, 2004. At the hearing the Government presented eight exhibits. The Applicant presented six exhibits and testified on his own behalf. The official transcript (Tr.) was received on August 18, 2004.

**FINDINGS OF FACT**

The Applicant is 32 years old, single, and has a high school diploma and one year of college. He is employed as a Security Guard 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 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.

Prior to 1997, the Applicant lived at home with his parents and had no financial responsibilities. He charged up his credit cards for miscellaneous items and he paid his bills on time. Unexpectedly, he was required to move out and pay for his own rent, food, furniture and other necessities. His full time job was reduced to part time. He moved in with a friend, and tried to find a second job in order to pay his bills. He still could not afford to pay his bills with the part time job and so he quit to find a full time position.

The Applicant eventually found full time employment with his current employer. Until March 17, 1999, he has never before applied for a security clearance, nor did he understand that it was a requirement for his job position. After receiving the SOR, the Applicant hired a consumer credit counseling agency to consolidate his debts and help him pay his past due indebtedness. (See Applicant's Exhibits A and B). The arrangement requires the Applicant to pay between \$400.00 and \$500.00 per month to the credit agency who in turn disperses the payments to the creditors. (See Applicant's Exhibit F). The Applicant has made several payments under this arrangement and plans to continue to do so as long as he is employed full time.

The Applicant admits to the indebtedness set forth in the SOR under this guideline. The Applicant is indebted to a creditor in the amount of approximately \$7,159.00 for a delinquent debt. As of September 2, 2003, this debt had not been satisfied. Since hiring the consumer credit agency, he has paid down some of the debt and currently owes approximately \$6,400.00. (See Tr. p. 50)

The Applicant is indebted to a creditor in the amount of approximately \$486.00 for a delinquent debt. As of September 2, 2003, this debt had not been satisfied. Since hiring the consumer credit agency, he had paid off most of the debt, but believes he still owes something. (See Tr. p. 51).

The Applicant is indebted to a creditor in the amount of approximately \$783.00 for a delinquent debt. As of September 2, 2003, this debt had not been satisfied. Since hiring the consumer credit agency, he has paid down the debt and currently owes them approximately \$650.00. (See Tr. p. 51).

The Applicant is indebted to a creditor in the amount of approximately \$5,377.00 for a delinquent debt. As of September 2, 2003, this debt had not been satisfied. This debt remains outstanding. (See Tr. p. 51).

The Applicant is indebted to a creditor in the amount of approximately \$5,361.00 for a delinquent debt. As of September 2, 2003, this debt had not been satisfied. This debt remains outstanding. (See Tr. p. 51-52).

The Applicant is indebted to a creditor in the amount of approximately \$2,553.00 for a delinquent debt. As of September 2, 2003, this debt had not been satisfied. The debt remains outstanding. (See Applicant's Answer to the SOR.).

The Applicant was indebted to a creditor in the amount of approximately \$283.00 for a delinquent debt. As of September 2, 2003, this debt had not been satisfied. The Applicant has paid off this debt.

The Applicant was indebted to a department store in the amount of approximately \$400.00 for a delinquent debt. As of September 2, 2003, this debt had not been satisfied. Since hiring the consumer credit agency, he has paid down the debt and currently owes them approximately \$250.00. (See Tr. p. 55).

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 Security Clearance Application (Standard Form 86), dated March 17, 1999. In response to question 28 (a), which asked, "In the last seven years he have you been over 180 days delinquent on any debts," the Applicant responded, "NO." (See Government Exhibit 1). This was a false answer. The Applicant failed to list those delinquent debts set forth in the SOR.

The same questionnaire at question 28 (b), asked the Applicant whether in the last seven years he had been over 90 days delinquent on any debts, the Applicant responded, "NO." (See Government Exhibit 1). This was a false answer. The Applicant failed to list those delinquent debts set forth in the SOR.

The Applicant explained that because he had no active accounts he did not believe that they were considered "delinquent." Since all of his delinquent accounts had been closed or sent to collections and were no longer accumulating days of delinquency, he did not believe that they were considered delinquent accounts. (See Tr. p. 31). The Applicant also claims that at the time he completed the security clearance application he did not understand that he was applying for a security clearance. He thought he was completing a simple job application required by his new contractor. The Applicant contends that he did not deliberately falsify the security clearance application.

First, the Applicant knew or should have known that his inactive credit accounts are still considered delinquent. He admitted that he knew he still owed his creditors money. Based upon this understanding, I cannot accept his excuse for failing to answer questions 28(a) and 28(b) truthfully. Accordingly, I find that the Applicant intentionally concealed his delinquent credit history from the Government when answering these questions.

### Mitigation.

A letter from the Applicant's employer indicates that the Applicant has been extremely dependable and has an excellent attendance record. (See Applicant's Exhibit D).

A letter from the Applicant's cite manager indicates that the Applicant is a great officer to have, and is willing to work without ever complaining regardless of the shifts and different posts. (See Applicant's Exhibit E).

## **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:

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);
6. The individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts.

### 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 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 was financially irresponsible (Guideline F); and that he intentionally falsified material facts on his 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 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.

With respect to his finances, the Applicant's history of excessive indebtedness was caused by reckless spending, irresponsibility, and lack of adequate employment. In an effort to resolve his financial indebtedness, the Applicant hired a financial counselor and is attempting to clean up his credit. The Applicant has initiated a good faith effort to repay his overdue creditors or otherwise resolve his debts. Consequently, I find that mitigating factors 3 and 6 set forth in the Directive under Guideline F apply. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

With respect to the Applicant's falsifications on his security clearance application, there is no excuse. He knew that he was to be honest and truthful in answering the questions on the application. 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 his personal background. In this instance, the Applicant intentionally sought to conceal derogatory information concerning his financial background from the Government. In this case, the Applicant has not demonstrated that he 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).

It appears that the Applicant has learned his lesson about the necessity of telling the truth to the Government at all times. The Applicant may well be eligible for a security clearance in the future. He is not now.

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 2 of the Government's Statement of Reasons. As indicated above, Paragraph 1 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.

Subpara. 1.a.: For the Applicant.

Subpara. 1.b.: For the Applicant.

Subpara. 1.c.: For the Applicant.

Subpara. 1.d.: For the Applicant.

Subpara. 1.e.: For the Applicant.

Subpara. 1.f.: For the Applicant.

Subpara. 1.h.: For the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: 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