

DATE: November 16, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-19779

**ECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's history of financial indebtedness, partially caused by circumstances beyond his control, and his intentional falsifications on his security clearance application, which is a violation of federal law, Title 18, United States Code, Section 1001, a felony, have not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

**STATEMENT OF THE CASE**

On November 7, 2003, 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 December 16, 2003 and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on April 8, 2004. A notice of hearing was issued on April 27, 2004, scheduling the hearing for June 15, 2004. At the hearing the Government presented seven exhibits. The Applicant presented four exhibits and he testified on his own behalf. The record was left open after the hearing for submission of additional documentation. The Government submitted one Post-Hearing Exhibit consisting of four separate enclosures with twenty-one pages. The Applicant submitted one Post-Hearing Exhibit consisting of four separate enclosures with nine pages. The official transcript (Tr.) was received on July 1, 2004.

**FINDINGS OF FACT**

The Applicant is 46 years old and married. He has completed his AA degree and some college courses. He is employed by a defense contractor as a Fiber Optics System Design Engineer and is seeking to obtain his 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 denies all of the allegations set forth under this guideline except subparagraphs 1(a), 1(b) and 1(c).

The Applicant filed for Chapter 7 bankruptcy in 1994. His personal debts were subsequently discharged. Two years later, in May 1996, he again filed for Chapter 7 bankruptcy, this time to discharge his corporate debts. Six years after that, in December 2002, he filed for Chapter 13 bankruptcy to reorganize his personal debts. The Applicant testified that he wanted to pay his debts, but he also wanted to secure and protect assets that he already had including his family home. (*See* Government Exhibit 3).

The Applicant explained that in 1992, prior to ever filing bankruptcy, he owned a security guard business. At that time, a large number of his customers owned businesses located in a rough area of the city. In April 1992, riots that gained national attention, occurred in the very areas in which his clients maintained their businesses. Many of his client's businesses were burned down or became insolvent after the riots. As a devastating repercussion, the Applicant's business lost numerous security accounts and suffered serious financial hardship. It was also about this time that the Applicant's business lost a major contract involving several auto dealerships. This contributed to him closing his business and filing for bankruptcy.

In 2002, as part of a legal strategy involving a civil court case filed in superior court, the Applicant filed a Chapter 13 reorganization in order to protect his assets. The Applicant testified that he was not attempting to liquidate any existing debts. He simply wanted to reorganize his debt. However, at some point, he learned that his bankruptcy filing "froze" all actions in the accompanying civic action that was underway. The Applicant could no longer afford to move forward on his superior court case even with the reorganization plan. He contends that he then requested that the federal court dismiss his Chapter 13 bankruptcy petition. His home was ultimately foreclosed upon in November 2002 and he was evicted.

The Applicant presently remains indebted to a number of creditors that include four separate credit card accounts owed to the same creditor totaling approximately \$5,000.00 set forth in subparagraphs 1(d), 1(e), 1(f), and 1(g) of the SOR (Tr. pp. 66-67), and various other credit card debts totaling approximately \$7,500.00 set forth in 1(j) and 1(k) of the SOR (Tr. pp. 69-70). Applicant's most recent credit reports also indicate that these debts are still owing. (*See* Government Exhibits 4 and 5).

The Applicant testified that he has paid a debt to a department store in the amount of \$330.00. A debt to a bank in the amount of \$6,449.00 that he owed was paid through the escrow sale of his property in November 2002. A judgment entered against him in 1996 for \$5,354.00 was also paid.

The Applicant's personal financial statement indicates that he is financially capable of paying his delinquent debts, as evidenced by a net remainder of \$992.00 after his expenses, however, the Applicant has failed to pay these debts. The Applicant contends that the cost of his lawsuit in superior court caused him to stop paying his debts. He did not have the money to pay for litigation and to pay his bills too.

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 denies all of the allegations set forth under this guideline.

The Applicant completed an electronic security clearance application dated July 12, 2002. Question 40 of the application asked him if in the last seven years had he been a party to any public record civil court actions? The Applicant answered "NO". (*See* Government Item 1). This was a false answer. The Applicant had in fact been a party to at least one civil court action. (*See*, Tr. p. 61).

Question 38 of the same application asked the Applicant if he was currently over 90 days delinquent on any debts? The Applicant answered "NO". (See Government Item 1). This was a false answer. The Applicant was 90 days or more delinquent on those debts set forth above in paragraph 1. The Applicant explained that he answered "NO" to the question because after filing bankruptcy his creditors would not accept payment and so he did not consider it a debt. (Tr. P. 45- 46).

The Applicant intentionally sought to conceal the truth in response to questions 38 and 40 on his security clearance application of July 12, 2002. The Applicant knew or should have known that he was a party to a lawsuit within the last seven years of completing the application and that he had delinquent debts that were 90 days or more delinquent. These questions are simple. The Applicant spent the last ten years working through his financial problems and did not candidly reveal this information to the government on his security clearance application. There is no excuse for this conduct. I find that the Applicant falsified his security clearance application in response to these questions.

Paragraph 3 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct.

The Applicant's deliberate falsifications on his security clearance application, discussed above, are a violation of Title 18 of the United States Code, Section 1001, a felony.

#### Mitigation.

Letter of recommendation submitted on behalf of the Applicant from a Senator, a reverend, and other dignitaries and professional colleagues and associates that know the Applicant are all favorable and indicate that he is loyal, trustworthy, responsible, dedicated and sincere. (See Applicant's Exhibit A).

### **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).

#### 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 status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

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

None.

## Guideline J (Criminal Conduct)

### Conditions that could raise a security concern:

1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;
2. A single serious crime or multiple lesser offenses.

### Condition 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 falsified information on his security clearance application (Guideline E) which is a violation of Federal law (Guideline J) and that he 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. With respect to his finances, admittedly, some of the Applicant's financial problems were caused by circumstances beyond his control, namely the aftermath of the riots that were devastating and negatively effected his business. His loss of several large accounts during this period also adversely effected his business. However, the business downturn is only part of the equation. Following the riots, the Applicant filed for Chapter 7 bankruptcy and then Chapter 13 bankruptcy relief. His Chapter 13 was dismissed without ever following through the reorganization plan. The Applicant's superior court case at the time was obviously a priority and very costly. So costly in fact that the Applicant was forced to dismiss it. Most of the outstanding debts that existed at the time of the bankruptcy still exist. A few of the debts have been paid, but not enough to make any significant impact on his financial situation.

Even assuming that the riots initially caused the Applicant's financial problems, since then, the Applicant has not made a good faith effort to turn around his financial situation, namely to pay off his past due creditors or resolve his financial indebtedness. Although he has filed bankruptcy on three separate occasions within the last ten years, he remains excessively indebted to a number of creditors. He states that he now has the ability to pay his outstanding debts, but he has done little or nothing to resolve his indebtedness. He has not demonstrated a sincere commitment to paying off his debts as soon as possible. The Applicant's financial problems remain current, (MC)1; they are not isolated, (MC) 2; and he has not initiated a good faith effort to repay his overdue creditors or otherwise resolve his debts (MC) 3. Consequently, none of the mitigating factors set forth in the Directive under Guideline F apply. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

Furthermore, it is inexcusable for the Applicant to intentionally provide false information to the Government on his security clearance application. He has a experience in working in the area of security management. The Applicant knew or should have known that he must reveal the truth to the Government regardless of its outcome. 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 back ground. The evidence here, proves that the Applicant has not been completely honest with the Government regarding his delinquent debts and his civil case. I find that the Applicant deliberately failed to reveal this information to the Government. He has also committed a violation of federal law, Title 18 of the United States Code, Section 1001, a felony. None of the mitigation factors set forth in the Directive under Guideline E or Guideline J apply. This 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) and Guideline J (Criminal 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 Paragraphs 1, 2 and 3 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.

Subpara. 1.k.: Against the Applicant.

Subpara. 1.l.: Against the Applicant.

Subpara. 1.m.: Against the Applicant.

Subpara. 1.n.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subpara. 3.a.: 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