

DATE: September 16, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-22748

**ECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Catherine Engstrom, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's financial indebtedness remains current and she has not made a good faith effort to resolve her debts. There is insufficient evidence of reform and rehabilitation. Her intentional falsifications on her security clearance application have also not been mitigated. Clearance is denied.

**STATEMENT OF THE CASE**

On May 17, 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 June 21, 2004, 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 1, 2004, consisting of ten documents. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on July 8, 2004, and she submitted no reply.

The case was assigned to the undersigned for resolution on September 7, 2004.

**FINDINGS OF FACT**

The following Findings of Fact are based on the Applicant's Answer to the SOR, and the exhibits. The Applicant is a 43 years old. She is employed by a defense contractor as an Executive Administrator and is seeking to obtain her 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 all of the allegations set forth under this guideline except 1.j. She has incurred financial difficulties and has used credit cards to pay other credit card debt. She has now cut up all of her credit cards and hopes to pay her debts as soon as she is able. She has approximately \$30,000.00 in delinquent debts that includes a federal tax lien, and an involuntary vehicle repossession. Each of the debts listed in the SOR are reflected in one or more of the Applicant's credit reports. (See Government Exhibits 7,8,9 and 10).

The Applicant is indebted to the Internal Revenue Service for a federal tax lien filed against her in April 2003 for unpaid federal income taxes in the approximate amount of \$17,414.00. As of May 11, 2004, this debt had not been paid. The Applicant indicates that she is currently paying the debt through voluntary payroll deductions and has reduced the debt by \$3,900.00. (See Government Exhibit 2).

The Applicant is indebted to a creditor for a delinquent account that was placed into collection in January 2003, in the approximate amount of \$97.00. As of May 11, 2004, the debt had not been paid. The Applicant indicates that the debt will be paid in full in 30 days. (See Government Exhibit 2).

The Applicant is indebted to a creditor for a delinquent account that has been placed into collection in April 2001, in the approximate amount of \$170.00. As of May 11, 2004, the debt had not been paid. The Applicant indicates that the debt will be paid in full in 30 days. (See Government Exhibit 2).

The Applicant is indebted to a creditor for a delinquent account that was placed into collection in September 2003, in the approximate amount of \$1,231.00. As of May 11, 2004, the debt had not been paid. The Applicant indicates that she will contact the creditor to set up a payment plan. (See Government Exhibit 2).

The Applicant was indebted to a creditor for a delinquent account that was placed into collection in September 2003, in the approximate amount of \$35.00. As of May 11, 2004, the debt had not been paid. The debt has since been paid in full.

The Applicant was indebted to a creditor for a delinquent account that has been placed into collection in August 2000, in the approximate amount of \$25.00. As of May 11, 2004, the debt had not been paid. The debt has since been paid in full.

The Applicant is indebted to a creditor for a delinquent account that was placed into collection in October 1997, in the approximate amount of \$545.00. As of May 11, 2004, the debt had not been paid. The Applicant indicates that she will contact the creditor to set up a payment plan. (See Government Exhibit 2).

The Applicant was indebted to a creditor for a delinquent account that was placed into collection in April 2000, in the approximate amount of \$942.00. As of May 11, 2004, the debt had not been paid. The Applicant indicates that she will contact the creditor to set up a payment plan. (See Government Exhibit 2).

The Applicant was indebted to a creditor for a delinquent account that has been placed into collection in March 2003, in the approximate amount of \$862.00. As of May 11, 2004, the debt had not been paid. The Applicant indicates that she will contact the creditor to set up a payment plan. (See Government Exhibit 2).

The Applicant is indebted to a creditor for a delinquent account that was placed into collection in April 2001, in the approximate amount of \$394.00. As of May 11, 2004, the debt had not been paid. The Applicant denies this debt, however, the debt is reflected on her credit report. (See Government Exhibit 7).

The Applicant was indebted to a creditor for a delinquent account that was placed into collection in December 2000, in the approximate amount of \$95.00. As of May 11, 2004, the debt had not been paid. The Applicant indicates that she will pay the debt in full in 30 days. (See Government Exhibit 2).

The Applicant was indebted to a creditor for a delinquent automobile loan in the approximate amount of \$8,536.00, which led to an involuntary repossession in about October 1997. As of May 11, 2004, the debt had not been paid. The Applicant indicates that she will contact the creditor to set up a payment plan. (See Government Exhibits 2).

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 admits the each of the allegations set forth under this guideline in the SOR. The Applicant completed a security clearance application dated September 11, 2002. Question 35 of the application asked her if in the last seven years has she had any property repossessed for any reason. The Applicant answered "NO". (See Government Exhibit 3 and 4). This was a false answer. The Applicant failed to list the fact that her automobile was repossessed in 1997.

Question 38, of the same application asked the Applicant, if in the last seven years she has been over 180 days delinquent on any debts. The Applicant failed to disclose her delinquent debts set forth in subparagraphs 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.j., 1.k., and 1.l. of the SOR.

The Applicant explained that she did not deliberately fail to disclose her vehicle repossession or her delinquent debts on her security clearance application. She blames her inaccuracies on the fact that she was updating the contact/reference section of the application and did not read each of the questions carefully. (See Government Exhibit 2).

### 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:

None.

#### 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.

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 her a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has been financially irresponsible (Guideline F) and that she falsified information on 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.

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 her finances, the Applicant has approximately \$30,000.00 in delinquent debt. She has not made a good faith effort to pay off her past due creditors or resolve her financial indebtedness. She is paying her delinquent tax debt through payroll deductions, and has reduced it somewhat. She has also paid two of her smaller debts. However, with respect to most of her debts, she has done absolutely nothing. She indicates that she will soon set up payment plans. Unfortunately, she has done too little, too late. There is no history of financial rehabilitation. Most of the debts remain owing. None of the mitigating factors apply. Her

financial problems remain current, (MC)1;They are not isolated, (MC) 2; and the Applicant has not initiated a good faith effort to repay her overdue creditors or otherwise resolve her debts (MC) 3. Consequently, I find that 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 her security clearance application. She failed to reveal her vehicle repossession and she did not reveal all of her delinquent debts. She knew or should have known to provide accurate information on her application and that it is a vital requirement to be honest. 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 back ground. The evidence proves that the Applicant has not been honest with the Government regarding her delinquent debts and her civil judgment. I find that the Applicant deliberately failed to reveal this information to the Government. None of the mitigation factors set forth in the Directive under Guideline E apply. 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).

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing her 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 and 2 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.: For the Applicant.

Subpara. 1.f.: For 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.

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