

DATE: September 14, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-33093

## **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 has been mitigated by a good faith effort to repay his creditors or otherwise resolve his financial indebtedness. Clearance is granted.

### **STATEMENT OF THE CASE**

On September 29, 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 October 23, 2003, in which he 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 May 27, 2004, consisting of twelve documents. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on June 1, 2004, and he submitted a reply, a letter from a creditor dated June 29, 2004.

The case was assigned to the undersigned for resolution on July 22, 2004.

### **FINDINGS OF FACT**

The following Findings of Fact are based on the Applicant's Answer to the SOR, the exhibits and his reply to the FORM. The Applicant is 48 years old, and separated from his wife. He is employed as a Quality Engineer 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.

The Applicant denies the debts set forth in the SOR. The Applicant states that his wife was in charge of paying the monthly bills. She overextended their credit charge accounts and could not pay all of the creditors on a timely basis. About two years ago, the Applicant discovered that he and his wife were substantially delinquent on some bills and he took over the responsibility of paying the bills. He contacted a consumer credit counseling agency and hired them to assist in getting his bills paid off. His debts were consolidated into one monthly payment under a four year payoff plan. He followed this plan, refinanced his house and paid off all but four of his delinquent debts.

In January 2002, the Applicant and his wife decided to separate. They are trying to divide their debt equally before they file for divorce.

The Applicant was indebted to a bank in the amount of \$2,783.00 for a delinquent account charged off in about August 2002. As of June 20, 2003, this debt had not been paid. The Applicant indicates that he has made payments as late as August 2003. The record indicates that payments have reduced the debt down to \$1,929.38. (See Government Exhibit 3).

The Applicant was indebted to a bank in the approximate amount of \$3,742.00 for a delinquent account referred to collection in about May 2002. As of June 20, 2003, this debt had not been paid. The Applicant negotiated a settlement amount with the creditor of \$1,860.46. This debt has now been paid in full. (See letter dated June 29, 2004 from United Recovery Systems).

The Applicant's personal financial statement dated July 1, 2003, indicates a negative net remainder of approximately \$60.00 after the Applicant has paid his monthly expenses.

## **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.

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

1. The behavior was not recent;
2. It was an isolated incident;
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 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 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 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 was 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 introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

With respect to his finances, the Applicant has a history of excessive indebtedness that he blames his wife for. Over the

past two years, he has taken over the responsibility of paying the bills and has been much better at handling their financial affairs. He has made a good faith effort to pay his debts and or resolve and settle them. Although his financial statement indicates that he does not have much money left after paying his monthly expenses to pay his past due debts, he has completely resolved one of them, and is making payments toward the other one. All of his other delinquent bills have been paid in full. Mitigating Conditions 1,2,4 and 6 apply. The Applicant's financial problems do not remain current, (MC)1; they are isolated, (MC) 2; the Applicant has sought out professional credit counseling to assist in paying off his delinquent debts, (MC)4; and the Applicant has initiated a good faith effort to repay his overdue creditors or otherwise resolve his debts (MC) 6. Consequently, mitigation factors set forth in the Directive under Guideline F apply. The Applicant must continue to pay off his delinquent debts until they are paid in full. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

On balance, it is concluded that the Applicant has overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 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: For the Applicant.

Subpara. 1.a.: For the Applicant.

Subpara. 1.b.: For the Applicant.

Subpara. 1.c.: For the Applicant.

### **DECISION**

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

Darlene Lokey Anderson

Administrative Judge