

DATE: February 27, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-00122

**DECISION 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 and his intentional falsification of his security clearance application concerning his financial history has not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

**STATEMENT OF THE CASE**

On October 31, 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 8, 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 December 31, 2003. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on January 5, 2004, and he submitted no reply. The case was assigned to the undersigned for resolution on February 20, 2004.

**FINDINGS OF FACT**

The Applicant is 29 years old and single. He is employed as a Rework Technician 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.

Each of the allegations set forth in the SOR are supported by the Applicant's credit reports. (*See*, Government Exhibits 6 and 7). The Applicant fully admits the indebtedness listed in allegations 1(c), and 1(d), of the SOR. With respect to the other allegations, he admits them with some qualifications. The Applicant stated that he went through a divorce and some of his financial problems were complicated by it since his income was reduced from two salaries to one.

The Applicant is indebted to a bank in the amount of \$284.00. He states that he is presently contesting the debt, but offers no further evidence.

The Applicant is indebted to a car company for a charged-off repossession in the amount of approximately \$8,422.00. The Applicant admits the debt, but disagrees with the amount owed and offers no further evidence.

The Applicant admits that he is indebted to a department store in the amount of approximately \$2,635.00. He also admits that he is indebted to the same department store for another delinquent account in the amount of approximately \$1,037.00.

The Applicant denies being indebted to a communications company in the amount of approximately \$117.00. The Applicant claims that the account does not belong to him. He states that he will continue to look into the account with the credit bureaus. He offers no further evidence.

The Applicant's financial statement dated October 7, 2002, indicates that the Applicant has a net remainder of \$236.00 after his monthly expenses. (*See*, Government Exhibit 5).

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 Questionnaire for National Security Positions (Standard Form 86), dated June 12, 2002. In response to question 35(d), which asked, "whether in the last seven years you had property repossessed for any reason." The Applicant responded, "NO," (*See*, Government Exhibit 4). This was a false answer. The Applicant had in fact had his car repossessed on or about October 1999. (*See*, Government Exhibit 5). The Applicant explained that he made a mistake and misread the question and did not intend to conceal this information. He states that he thought that the word "property" was referring to a house, and that he did not understand that the question could also be referring to a car. (*See*, Government Exhibit 3).

The same questionnaire at question 38, asked the Applicant whether in the last seven years has he ever been over 180 days delinquent on any debts. The Applicant responded, "YES", and listed a debt to a bank in the amount of \$300.00. (*See*, Government Exhibit 4). The Applicant failed to list other delinquent debts of more than 180 days, including a debt owed to a car company for a car that was repossessed, and a debt owed to a communication company. (*See*, Government Exhibit 5). Question 39, of the questionnaire, asked the Applicant if he was currently over 90 days delinquent on any debts. The Applicant responded, "NO". (*See*, Government Exhibit 4). These were both false answers. The Applicant failed to list his debts that were over 180 days delinquent within the last seven years, or those that were currently over 90 days delinquent. The Applicant stated that he did not think that his delinquent accounts would be considered due and owing due to the fact that they were closed for collection. (*See*, Government Exhibit 3).

The Applicant contends that he misunderstood the questions and that he did not deliberately falsify the security clearance application. I find that the Applicant knew or should have known that he had to reveal his complete financial history, including his car repossession and his debts that were 180 days and 90 days delinquent on his security clearance application. The statement that he misread the question, or did not understand the question is not credible. The fact that the Applicant did not reveal this information leads me to believe that he intentionally concealed this information from the Government.

## **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:

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 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 has a history of excessive indebtedness and has made little effort, if any, to pay off his outstanding debts. His financial statement indicates that he is capable of paying some of his past due debts, but he has chosen not to pay them. The Applicant's divorce has obviously caused him some financial hardship. However, the record does not adequately address the particulars as to how, why, when and to what degree. Disqualifying conditions (DC)1, a history of not meeting financial obligations; and (DC)3, an inability or unwillingness to satisfy debts have not been mitigated. The Applicant's financial problems remain current; (MC)1, they are not isolated, (MC)2, and the Applicant has not initiated a good faith effort to repay his overdue creditors or otherwise resolve his debts (MC)3. Consequently, I must find that none of the mitigation factors set forth in the Directive under Guideline F apply. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

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. This Applicant has not responded to the FORM providing any additional evidence, and 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 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.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

Subpara. 2.c.: 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