

DATE: December 7, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-05686

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Sabrina Elaine Redd, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's financial indebtedness remains delinquent and he has not made a good faith effort to resolve his debts. His intentional falsifications on his security clearance application are a violation of Title 18, United States Code, Section 1001, a felony, and have not been mitigated. His arrests in 1999 and 2001, have not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

**STATEMENT OF THE CASE**

On August 31, 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 October 7, 2004 and November 22, 2004, 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 June 7, 2005, consisting of nineteen Government Exhibits referred to in the record as Government Exhibits 1 through 19. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on June 13, 2005, and he submitted no reply. The case was received by the undersigned for decision on July 19, 2005.

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the contents of the Form and the Applicant's reply to the FORM. The Applicant is 32 years of age. He is an Administrative Assistant for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

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 was on active duty in the Air Force for eight years and was assigned overseas. During this time, he was young, married and had a child that he was required to support. He was the only working adult in the family. They became overextended with too much debt and could no longer meet their financial obligations in a timely fashion. At times the Applicant wrote checks when he did not have sufficient funds to do so. On at least two occasions, formal complaints were filed against him by the creditors. (See Government Exhibits 13 and 16). The Applicant indicates that while in the military he received financial counseling on several different occasions. (See Government Exhibits 10, 11 and 12). The Applicant and his wife have divorced. His ex-spouse filed bankruptcy leaving him with all of the debt from the marriage. He states that he has since started contacting all three credit bureaus and has been paying off debt. He is living at home with his mother and she is not charging him any rent.

The SOR sets forth approximately twenty-three delinquent debts totaling about \$32,000 allegedly owed by the Applicant. The Applicant admits to twelve of the delinquent debts set forth in allegations 1.a., 1.b., 1.d., 1.e., 1.h., 1.i., 1.k., 1.n., 1.s., 1.t., 1.z., and 1.aa., totaling approximately \$12,180. (See Applicant's Answer to SOR). The remaining debts he denies, claiming that the debts were not his and are not his responsibility, or they are beyond the statute of limitations. He denies all of the other delinquent debts set forth in the SOR. (See Government Exhibit 9 and Applicant's Answer to the SOR). Credit reports of the Applicant indicate that all twenty-five debts set forth in the SOR are delinquent and owing. (See Government Exhibits 7 and 8).

The Applicant has provided no documentary evidence of any kind to show that he is paying his past due creditors. It is unclear from the record who, when and how, he will satisfy his past due debts.

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 July 25, 2002. Question 26 of the application asked the Applicant if in the last seven years he had been arrested for, charged with, or convicted of any offenses(s) not listed in modules 21, 22, 23, 24 or 25. The Applicant answered, "NO." (See Government Exhibit 6). This was a false answer. The Applicant failed to disclose that he was arrested in March 1999 and charged with Alleged Threats/Resisting Apprehension and in March 2002 for Second Degree Assault. The Applicant states that he was advised that none of his criminal offenses were on his criminal record and so he did not list them.

The same application, at question 37, asked the Applicant if in the last seven years he has had any judgments against him that have not been paid. The Applicant answered, "NO." (See Government Exhibit 6). This was a false answer. The Applicant failed to disclose a judgment issued against him in November 1995 and another in June 2001. (See Government Exhibits 7 and 8). The Applicant claims that these judgments occurred over seven years ago and therefore he did not list them. This argument can be made with respect to the judgment entered against him in November 1995, but not the one in June 2001.

The same application, at question 38 asked the Applicant if in the last seven years he has ever been over 180 days delinquent on any debts. The Applicant answered, "YES," and listed one debt for \$4,000 owed to a bank. (See Government Exhibit 6). This was not all or even close to being accurate. The Applicant failed to list his twenty four other delinquent debts set forth in the SOR. The Applicant claims that these debts were all incurred over seven years ago and therefore he did not list them.

I find that the Applicant knew or should have known to reveal the truth about his criminal record and his history of delinquent debts. The fact that he did not indicates that he was simply not being truthful at the time he completed the security clearance application. He obviously did not take the process of filing out the application seriously and it shows. Except for his failure to list the judgment entered against him in November 1995, I find that the Applicant deliberately

attempted to conceal his delinquent financial history from the Government on his security clearance application.

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.

The Applicant was arrested on March 6, 1999, and charged with Alleged Threats/Resisting Apprehension. (See Government Exhibit 18). He was placed in counseling.

He was also arrested on March 27, 2002, and charged with Second Degree Assault. He pled no contest and was ordered to take an Anger Management Class and sentenced to one year of probation. (See Government Exhibits 15 and 19).

### **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.

Condition that could mitigate security concerns:

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, dishonesty and criminal conduct 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 has been financially irresponsible (Guideline F); and he has been untruthful on his security clearance application (Guideline E); in violation of a criminal statute (Guideline J). 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.

It is noted that the Applicant has gone through a divorce and was left with the debts from the marriage. However, this does not appear to be the real problem as to why the Applicant has not paid his bills. He states that he has contacted his creditors and is paying his debts, however, he presents no documentary evidence to support this. He has presented no evidence to show that he has made or is making a good faith effort to pay off his past due creditors or resolve his financial indebtedness. Furthermore, there is no evidence in the record to show that the Applicant has learned how to properly manage his financial affairs. With respect to his finances, the Applicant has admitted in excess of \$12,000.00 in delinquent debt. His credit reports show in excess of \$32,000.00 in delinquent debt. To his credit, the Applicant has moved into his mother's home and is not paying rent. This should allow him more money to pay his delinquent debts. Upon review of his financial statement, it appears that he has a remainder at the end of the month that could be used to pay his delinquent debts, but he has failed to demonstrate that he has done anything at all. There is no evidence of financial rehabilitation. All of the debts remain owing, and he remains heavily indebted. Under Guideline F (Financial Considerations), Disqualifying Conditions (1) *A history of not meeting financial obligations* and (3) *Inability or unwillingness to satisfy debts* apply. None of the mitigating conditions (MC) apply. His 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. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

With respect to Guidelines E and J, the Applicant has presented no reasonable excuse as to why he did not reveal his criminal record and his delinquent financial history in response to questions 26, 37 and 38 on his security clearance application. With the particular evidence that I have been provided, there is no reasonable excuse for his failure to answer the questions truthfully. Consequently, the evidence shows that the Applicant has not been completely honest with the Government regarding his criminal and financial history and he sought to conceal the truth. Disqualifying Condition (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* applies. None of the mitigating conditions are applicable. I find that the Applicant deliberately failed to reveal this information to the Government and that he violated a Title 18, United States Code, Section 1001, a felony.

Furthermore, the Applicant has been arrested on two separate occasions for criminal conduct in 1999 and 2002. Disqualifying Conditions (1) *Allegations or admissions of criminal conduct, regardless of whether the person was formally charged* and (2) *A single serious crime or multiple lesser offenses* both apply. None of the mitigating factors apply. Accordingly, I find against the Applicant under Guidelines E and J.

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 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.

Subpara. 1.o.: Against the Applicant.

Subpara. 1.p.: Against the Applicant.

Subpara. 1.q.: Against the Applicant.

Subpara. 1.r.: Against the Applicant.

Subpara. 1.s.: Against the Applicant.

Subpara. 1.t.: Against the Applicant.

Subpara. 1.u.: Against the Applicant.

Subpara. 1.v.: Against the Applicant.

Subpara. 1.w.: Against the Applicant.

Subpara. 1.x.: Against the Applicant.

Subpara. 1.y.: Against the Applicant.

Subpara. 1.z.: Against the Applicant.

Subpara. 1.aa.: 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.

Subpara. 2.d.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subpara. 3.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

Subpara. 2.c.: Against the Applicant.

Subpara. 2.d.: 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