

DATE: February 22, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-10127

## **DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Robert E. Coacher, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant's history of financial indebtedness partially caused by a recent divorce has been mitigated by a good faith effort to repay her creditors or otherwise resolve her financial indebtedness. Clearance is granted.

### **STATEMENT OF THE CASE**

On June 8, 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 26, 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 October 28, 2004, consisting of six documents, referred to as Items 1 through 6. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on November 10, 2004, and she submitted a reply dated December 5, 2004.

The case was assigned to the undersigned for resolution on December 10, 2004.

### **FINDINGS OF FACT**

The Applicant is 49 years old. She is employed as a MRP Planner by a defense contractor and is applying for a 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.

After six years of marriage the Applicant and her husband legally divorced in August 2002. The divorce caused the Applicant serious financial difficulties. At one point she was using her credit cards to purchase food and clothing. In the summer of 2002, she consulted with a debt management counselor for financial guidance. In order to eliminate her debt, she has taken out loans from her company savings program and has worked many hours of overtime. Three of the twelve debts listed in the SOR are her ex-husband's responsibility, pursuant to the divorce decree. In regard to the debts that she is responsible for, she has paid off all but two of them. She is in the process of offering a settlement to the remaining creditors.

The Government's evidence, namely the Applicant's credit report, supports each of the allegations in the SOR. (*See* Government Exhibit 6). The following debts were outstanding and owing by the Applicant as of May 19, 2004.

Allegation 1(a). The Applicant is indebted to a bank in the approximate amount of \$12,125.00. The Applicant indicates that she is in the process of negotiating a settlement agreement with the creditor and plans to pay it off soon. (*See* Applicant's Reply to FORM).

Allegation 1(b). The Applicant was indebted to a bank in the approximate amount of \$4,072.00. The Applicant has settled this debt and satisfied it in full. (*See* Applicant's Reply to Form, Letter dated September 27, 2004 and Applicant's Response to SOR, Letter dated December 21, 2003).

Allegation 1(c). The Applicant was indebted to a bank in the approximate amount of \$524.00. The Applicant has settled this debt and satisfied it in full. (*See* Applicant's Response to SOR, Letter dated November 23, 2003).

Allegation 1(d). The Applicant was indebted to a bank in the approximate amount of \$1,276.00. The Applicant has settled this debt and satisfied it in full. (*See* Applicant's Reply to FORM, Letter from creditor dated October 6, 2004).

Allegation 1(e). The Applicant is indebted to a bank in the approximate amount of \$1,034.00. The Applicant is in the process of negotiating a settlement with the creditor and plans to pay it off soon. (*See* Applicant's Reply to FORM).

Allegation 1(f). The Applicant is indebted to a creditor in the approximate amount of \$468.00. The Applicant is not responsible for this debt as the divorce decree assigned it to her husband. (*See* Applicant's Response to SOR, copy of divorce decree).

Allegation 1(g). The Applicant is indebted to a creditor in the approximate amount of \$435.00. The Applicant is not responsible for this debt as the divorce decree assigned it to her husband. (*See* Applicant's Reply to FORM, Letter dated October 5, 2004 and Response to SOR, copy of divorce decree).

Allegation 1(h). The Applicant is indebted to a creditor in the approximate amount of \$2,468.00. The Applicant is not responsible for this debt as the divorce decree assigned it to her husband. (*See* Applicant's Response to SOR, copy of divorce decree).

Allegation 1(i). The Applicant is indebted to a creditor in the approximate amount \$80.00. This debt is currently in dispute and has not been paid. (*See* Applicant's Response to SOR, Letter dated October 10, 2001).

Allegation 1(j). The Applicant was indebted to a creditor in the approximate amount of \$1,034.00. The Applicant asserts that this is a duplicate of the debt set forth in allegation 1(e).

Allegation 1(k). The Applicant was indebted to a creditor in the approximate amount of \$867.00. The Applicant has settled this debt and satisfied it in full. (*See* Applicant's Response to SOR, Letter dated November 11, 2003).

Allegation 1(l). The Applicant was indebted to a creditor in the approximate amount of \$1,920.00. The Applicant is not

responsible for this debt as the divorce decree assigned it to her husband. (*See Applicant's Response to SOR, copy of divorce decree*).

## **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.

6. The person has initiated a good faith effort to repay 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 her 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 her finances, the Applicant's excessive indebtedness was partially caused by her divorce in 2002. The rest of the debt was accumulated because of poor financial decisions. Since then, she has made great strides to pay off her outstanding debts and resolve her financial problems. The Applicant has paid off most of her outstanding delinquent debts. She has provided a copy of her divorce decree that sets forth those debts that are solely her husbands responsibility. Only two of her debts remain outstanding, and she is in the process of getting them settled and paid off. Her financial statement indicates that she is capable of paying her past due debts and she is in the process of paying them. Mitigating Conditions 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, and 6, The person has initiated a good faith effort to repay creditors or otherwise resolve debts* in the Directive under Guideline F apply. 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 her 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.

Subpara. 1.d.: For the Applicant.

Subpara. 1.e.: For the Applicant.

Subpara. 1.f.: For the Applicant.

Subpara. 1.g.: For the Applicant.

Subpara. 1.h.: For the Applicant.

Subpara. 1.i.: For the Applicant.

Subpara. 1.j.: For the Applicant.

Subpara. 1.k.: For the Applicant.

Subpara. 1.l.: 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