

KEYWORD: Financial

DIGEST: Applicant's history of financial indebtedness caused by a separation from her boyfriend and inexperience in handling her own financial affairs has been mitigated by a good faith effort to repay her creditors or otherwise resolve her financial indebtedness. Clearance is granted.

CASENO: 03-17345.h1

DATE: 06/27/2005

DATE: June 27, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-17345

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Lougran, Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant's history of financial indebtedness caused by a separation from her boyfriend and inexperience in handling her own financial affairs 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 August 10, 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 August 31, 2004, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 23, 2004. A notice of hearing was issued on December 16, 2004, scheduling the hearing for January 19, 2005. At the hearing the Government presented nine exhibits. The Applicant presented one exhibit and testified on her behalf. She also submitted one Post-Hearing Exhibit. The official transcript (Tr.) was received on February 3, 2005.

### **FINDINGS OF FACT**

The Applicant is 39 years old. She is employed as a Security Guard 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.

From 1990 to 1998, the Applicant was either receiving county assistance or was supported by a person who she refers to as her common law husband, with whom she lived with for many years. At that time, she contends that her credit was perfect. At some point in their relationship he became possessive and abusive to her, and she left him in 1998. She then got a job and began to support herself and her daughter. It was a difficult transition for her, as she had never worked before. She eventually earned enough money to get her own apartment, a new car and her own credit cards. Although she was terminated from her first job due to employee disagreements, she was soon hired on with her current employer. She soon began living beyond her means. When she realized that her bills were not payable on her income, in May 2002, she filed for Chapter 7 Bankruptcy. Her debts were discharged on August 19, 2002. It is not clear from the record whether the Applicant included all of her delinquent debts she had at the time in her Bankruptcy petition, or whether she forgot to include a few of her debts. In any case, following her bankruptcy, she tried to pay her bills on a timely basis, but fell behind again.

The Government's evidence, namely the Applicant's credit reports, support each of the allegations in the SOR. (See Government Exhibits 5 and 6). The Applicant indicates that several of the debts listed in the SOR were actually discharged in the Bankruptcy, another one she is disputing, and the others she has paid in full. The following debts were outstanding and owing by the Applicant as of February 26, 2004.

Allegation 1(a). The Applicant was indebted to a creditor in the approximate amount of \$123.00. The Applicant states that she paid the debt on January 31, 2005. (See Applicant's Post- Hearing Exhibit).

Allegation 1(b). The Applicant was indebted to a creditor in the approximate amount of \$499.00. The Applicant states that she paid the debt on January 31, 2005. (See Applicant's Post- Hearing Exhibit).

Allegation 1(c). The Applicant was indebted to a creditor in the approximate amount of \$394.00. The Applicant was not the primary account holder on this account and claims that the boyfriend owes the debt. She was advised to file a consumer dispute to have it removed from her credit report. She plans on doing this. (See Applicant's Post-Hearing Exhibit).

Allegation 1(d). The Applicant was indebted to a creditor in the approximate amount of \$704.00. The Applicant indicates, and the schedules show that this debt was discharged in her Chapter 7 Bankruptcy. (See Tr. p. 33 and Government Exhibit 7).

Allegation 1(e). The Applicant was indebted to a creditor in the approximate amount of \$3,399.00. The Applicant indicates, and the schedules show that this debt was discharged in her Chapter 7 Bankruptcy. (See Tr. pp. 33-34 and Government Exhibit 7).

In addition to her security guard position, the Applicant has another part time job. Her finances are tight. The Applicant's present financial situation indicates that she is capable of paying her monthly expenses, but she must be careful to budget her money accordingly. (See Tr. pp. 36-38). She has about \$75.00 in her savings account.

Letters of reference from the Applicant's supervisor and a coworker attest to her reliability and trustworthiness. She is an excellent trainer, and always upholds all of the rules and regulations of the defense contractor. She is considered an asset to the company and one of their best security guards. (See Applicant's Exhibit A).

## **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 separation from her common law husband who supported her for many years, but mostly caused by her inexperience at handling her financial affairs in a responsible manner. Since then, she has made strides to pay off her outstanding debts and resolve her financial problems. The Applicant filed for Bankruptcy in 2002 and discharged most of her debt. The remaining debt she has either paid off or she is disputing. She has incurred no new debt since her Bankruptcy. Her present financial situation indicates that she is capable of paying her monthly expenses but she must be careful to budget her money accordingly. The Applicant realizes that she cannot live beyond her means. She must continue to pay her debts on time or her security clearance may be jeopardy. 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.

### **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