

KEYWORD: Financial

DIGEST: Applicant's financial indebtedness remains current and he has not made a good faith effort to resolve his debts. Clearance is denied.

CASENO: 03-25346.h1

DATE: 09/28/2005

DATE: September 28, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-25346

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Candance Le'i, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's financial indebtedness remains current and he has not made a good faith effort to resolve his debts. Clearance is denied.

**STATEMENT OF THE CASE**

On January 31, 2005, 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 February 7, 2005, February 24, 2005 and March 21, 2005, 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), consisting of twenty-two Government Exhibits referred to in the record as Government Exhibits 1 through 22 to the Applicant on June 8, 2005. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on June 23, 2005, and he submitted no reply. The case was received by the undersigned for decision on August 3, 2005.

**FINDINGS OF FACT**

The following Findings of Fact are based on the Applicant's Answer to the SOR, and the contents of the FORM. The Applicant is 49 years old. He is employed by a defense contractor as an Analyst and is seeking to obtain his 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 has a nineteen year history of financial indebtedness that began in 1986 and continues to the present. The Applicant's financial problems began with the death of his father-in-law in 1986. Three years later, in 1989, the Applicant, who was in the military at the time, was assigned overseas and left his family behind. In 1991, he returned stateside and received orders to move again. These events caused financial strain. The Applicant also believes that these series of moves may have caused the bills not to be forwarded to him for payment. To deal with these financial problems the Applicant discovered a facility that would advance a portion of his paycheck to him. He used this service routinely which only caused more financial difficulties. (*See* Government Exhibits 10 and 11).

In 1996, the Department of the Navy issued the Applicant a Letter of Intent alleging that his excessive indebtedness and recurring financial difficulties were a potential security risk. (*See* Government Exhibit 16). The Applicant was ultimately awarded a conditional security determination in August 1996, based on evidence presented in his June 13, 1996, answer that he was making payments to creditors and was working with a consumer credit counselor to improve his finances. (*See* Government Exhibit 12). Since then, the Applicant's manner of handling his financial affairs has not improved.

In 1998, the Applicant filed for Chapter 7 Bankruptcy to discharge his debts of approximately \$210,702.50. (*See* Government Exhibits 18 and 19). Two years later, in March 2000, his wife had open heart surgery and could no longer work. As a result, their automobiles were repossessed, and their financial situation grew even more dismal. In 2002, both his mother and his mother-in-law passed away. Each of these events caused the Applicant to spend money he had not planned on spending and caused additional financial strain. Presently, the Applicant is financially over-extended and unable to pay his monthly obligations.

The Applicant admits to all of the delinquent debts set forth in the SOR. (*See* Applicant's Answer to SOR).

Credit reports of the Applicant indicate that he is indebted to six different creditors, totaling an approximate amount in excess of \$6,000.00. (See Government Exhibits 20, 21 and 22). According to these credit reports each of the debts listed in the SOR remain outstanding and delinquent. The Applicant contends that he has paid off all of his past due creditors by refinancing his house, however he provides no documentary evidence to support this. (See Applicant's Answer to SOR).

The Applicant's personal financial statement dated July 23, 2003, shows that he has a net remainder of negative \$871.00 after paying his monthly expenses, which does not include repayments on his delinquent accounts set forth in the SOR. (See Government Exhibit 10).

## 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: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 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). The 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 long history of financial indebtedness. Admittedly, he has encountered circumstances beyond his control that have aggravated his financial problems. Under ordinary circumstances these events beyond his control can be considered mitigating. However, in this case, after filing bankruptcy in 1989, and discharging approximately \$210,000.00 in debt,

the Applicant was completely debt free. He discharged all of his debt except his house and car payment. At that point, no matter what was to happen in life, he should have been able to manage his financial affairs without getting too deeply in debt again. This was not the case. Along with more unexpected problems came more debt and an inability to properly manage his finances. He over-extended himself, made poor financial decisions and again arrived in a situation where he was excessively financially indebted. He now contends that he has paid them off by refinancing his house, but there is no documentary evidence to support this. I cannot find that this blind assertion without proof is credible. I have no proof in the record that his outstanding debts have been paid or that he has changed his method of financial management. I find all of the alleged debts to be valid and owing and that his financial indebtedness has not been resolved.

Upon review of his financial statement, it appears that he does not have disposable income at the end of the month that he could use to pay his past due debts. There is no evidence of financial rehabilitation. 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).

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 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.

**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