

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant's history of financial indebtedness caused by his ex-wife's misuse of her power of attorney both during her marriage to the Applicant and after the divorce, and the fact that the matter is presently under formal investigation, shows a good faith effort to repay his creditors or otherwise resolve his financial indebtedness. Clearance is granted.

CASENO: 03-27008.h1

DATE: 01/06/2006

DATE: January 6, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-27008

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

Alan V. Edmunds, Attorney at Law

**SYNOPSIS**

Applicant's history of financial indebtedness caused by his ex-wife's misuse of her power of attorney both during his marriage to the Applicant and after the divorce, and the fact that the matter is presently under formal investigation, shows a good faith effort to repay his creditors or otherwise resolve his financial indebtedness. Clearance is granted.

**STATEMENT OF THE CASE**

On April 7, 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 May 11, 2005, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on July 19, 2005. A notice of hearing was issued on August 25, 2005, scheduling the hearing for September 8, 2005. At the hearing the Government presented seven exhibits. The Applicant presented eighteen exhibits. He also called one witness and testified on his own behalf. The record was left open to allow the Applicant to submit additional supporting documentation. The Applicant submitted one Post-Hearing Exhibit, with seven enclosures, consisting of twenty four pages. The official transcript (Tr.) was received on September 20, 2005.

## FINDINGS OF FACT

The Applicant is 42 years old. He is employed as a Product Support IPT 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.

The Applicant joined the Marine Corps delayed entry program in 1981, at the age of seventeen. By June of 1981, at the age of eighteen he was on active duty in the Marine Corps. In 1982, he obtained a security clearance that he has held continually for twenty years without compromise. After twenty three years of active duty the Applicant retired in 2004.

During the Applicant's periods of overseas military deployment, his wife was given power of attorney over their financial affairs. Her job was to pay the bills. The Applicant provided financial support to cover the bills, but his wife failed to pay them. She secretly opened a post office box, had the bills going to it, and opened up accounts under the Applicant's name that he was not aware of. She was planning to divorce the Applicant which did not become apparent to him until 1997. The Applicant and his wife separated in 1997, and their divorce was final in June 1999. The divorce decree stipulated that when their house was sold, all of the debt accumulated during the marriage were to be paid off. The Applicant admits that he was responsible for paying two credit card debts totaling approximately \$10,000. He sent the money to her to pay the debts but she did not. From what the Applicant can tell, his wife did not pay any of the bills and continued to use the Applicant's credit.

With respect to the delinquent debts set forth in the SOR, the Applicant argued that they were incurred by his now ex-wife without his knowledge while he was deployed overseas on active duty. A court judgment was entered against the Applicant by his wife without the Applicant receiving notice of the hearing. Since the Applicant had no knowledge of the debts, and his wife had no authority at the time to enter into the debt, the Applicant does not believe them to be valid debts. The Applicant contends that these debts were fraudulently incurred by his wife who forged his signature when she opened the accounts. The Applicant was so outraged by his ex-wife's conduct that he reported the matter to the local United States Attorney General's Office who referred him to private counsel. The Applicant testified that he was never given notice of the hearing and was not given an opportunity to appear in court and respond to the complaint. The Applicant believes that his rights under the Soldiers and Sailors Act have been violated. The matter is still under investigation.

At some point, to get the Applicant's ex-wife to stop fraudulently using his credit, the Applicant made an offer of compromise to her, an offer to pay her what he owed as a result of the judgment she entered against him. His wife failed to respond. (See Applicant's Post Hearing Exhibit).

After his divorce was final, the Applicant's ex-wife opened up at least one account in the Applicant's name without his knowledge, a credit card with a gasoline company. The Applicant threatened to take legal action against his wife if she did not stop opening fraudulent accounts. Since then he has heard nothing from her and is not aware of any further misconduct on her part.

The Government's evidence, namely the Applicant's credit reports, support each of the allegations in the SOR. (See Government Exhibits 4, 5 and 6). The Government has submitted no evidence to rebut the Applicant's explanation for the outstanding debts that remain in his name.

The Applicant has remarried and re-established his credit. He has contacted each of the credit agencies and informed them of the situation. He is current with all of his monthly expenses, his taxes are paid in a timely fashion, he has no current debt and his credit rating is in good standing.

(See Applicant's Post Hearing Exhibit).

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 September 26, 2000. Question 38 of the application asked the Applicant if in the last seven years he had been over 180 days delinquent on his debts. The Applicant answered, "NO." (See Government Exhibit 1). This was a false answer. The Applicant was in fact indebted to each of the creditors listed in the SOR.

The same application, at question 39, asked the Applicant if he was currently over 90 days delinquent on any debts. The Applicant answered, "NO." (See Government Exhibit 1). This was a false answer. The Applicant was in fact indebted to each of the creditors listed in the SOR.

The Applicant explained that at the time he completed the application, he was in the process of learning that his wife had not paid their bills and that she had opened up accounts in his name that he had no knowledge of. He did not know, however, who, exactly, the creditors were. He was advised by someone who he believed had the authority to advise him to answer "No" in response to those two questions since he did not know the specifics of the debts. However, in bold print in response to question 43 of the general remarks section, the Applicant noted, "For financial records, delinquencies may be noted or attached due to joint account with former spouse". Based upon the comment he made in response to question 43 and the fact that he was advised by someone whom he believed to be a reliable source to answer "NO" to questions 38 and 39, I do not find that the Applicant intentionally sought to conceal any information from the Government concerning his history of financial delinquency. Accordingly, I find for the Applicant under this Guideline.

A Chief Warrant Officer for whom the Applicant worked for two years while the Applicant was on active duty and who is also a personal friend, testified about the numerous awards, medals and other commendations received by the Applicant during his military career both in and out of combat. (Tr. pp. 25-34).

Applicant's performance evaluations indicate that he is on track and meets or exceeds expectations in every category. (See Applicant's Exhibit A).

Letters of recommendation submitted by the Applicant attest to his outstanding character and his job performance level is exemplary. (See Applicant's Exhibits J, K, L, M, N, O, P and Post- Hearing Exhibit).

## **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.

Guideline E(Personal Conduct)

Condition that could raise a security concern:

None.

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 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 her a security clearance.

In this case the Government has met its initial burden of proving that the Applicant was financially irresponsible (Guideline F) and dishonest (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 introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

With respect to his finances, the Applicant's wife incurred debt in the Applicant's name, without his knowledge, while he was deployed overseas in the arines. This situation was at the time, largely beyond his control. She even obtained a judgment against him. The Applicant was not notified of the court proceeding and was denied his day in court. The Applicant and his attorney have opened up a formal investigation into the matter. The Applicant's demeanor and testimony appeared sincere and believable. The Applicant does not believe the debts are valid or are his responsibility since his wife fraudulently opened these accounts without his consent and in many cases forged his signature, even after the power of attorney had expired and the divorce was final. Since his divorce in 1999, the Applicant has re-established his credit, is paying his bills in a timely manner and budgeting his finances accordingly. He understands that he must



continue to pay his debts on time or his security clearance may once again be in 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).

With respect to whether the Applicant intentionally sought to conceal the truth about his delinquent finances from the Government, I find that he did not. First, the Applicant put the Government on notice in the general remarks section of the security clearance application (under question 43) that he may have some delinquent debts as a result of his divorce. Secondly, he was given poor advice by someone in the security department on how to properly respond to the question given his circumstances. In any case, the Applicant did not know what delinquent debts he had and he should have found out before answering the question. However, under the particular circumstances of this case, I cannot find that he deliberately sought to conceal the truth. Consequently, the evidence shows that the Applicant was as honest as he could be under the circumstances with regard to his financial history. Accordingly, I find for the Applicant under Guideline E (Personal Conduct).

On balance, it is concluded that the Applicant has overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding for 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: 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.

Subpara. 1.m.: For the Applicant.

Subpara. 1.n.: For the Applicant.

Paragraph 2: For the Applicant.

Subpara. 2.a.: For the Applicant.

Subpara. 2.b.: 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