

DATE: May 10, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 04-03093

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's history of financial indebtedness was largely caused by circumstances beyond his control, namely extended periods of underemployment or unemployment coupled with an unexpected family illness and a marital separation, has been mitigated by a good faith effort to repay his creditors or otherwise resolve his financial indebtedness. Clearance is granted.

**STATEMENT OF THE CASE**

On February 14, 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 July 12, 2005, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on September 27, 2005. A notice of hearing was issued on October 13, 2005, scheduling the hearing for November 8, 2005. At the hearing the Government presented fourteen exhibits. The Applicant presented three exhibits 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, consisting of six pages. The official transcript (Tr.) was received on November 22, 2005.

**FINDINGS OF FACT**

The Applicant is 45 years old, married and although he finished twelfth grade, he has a third grade reading level. He is employed as an Electronic Mechanic 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 is indebted to eight separate creditors totaling in excess of \$19,000.00. (See Applicant's Exhibits 6, 7, 8, 9, 10, 11, 12, 13 and 14). He explained that for most of his adult life, since 1980 or so, extended periods of unemployment, underemployment and low paying jobs have significantly contributed to his financial problems. There were also other unfortunate situations. In 1994, he moved from Louisiana to California because of his son's illness. His son was diagnosed with sickle cell anemia and hospitalized for an extended period out of state that required the Applicant to leave his job and permanently relocate. Following this, he did not find suitable employment. In addition, the Applicant made some stupid mistakes. In the early 1980's, the Applicant and his brother purchased a mobile home together and it was understood between the two of them that his brother would be responsible for the mortgage payments. Apparently the mobile home went into foreclosure without the Applicant's knowledge. During this time, the Applicant loaned his car to a friend, who while using it, received numerous parking tickets in the Applicant's name in the sum of \$949.00. His friend refuses to pay the tickets. The Applicant states that he will arrange to pay these tickets off. As a result, the Applicant has accumulated unnecessary debt over the years that he could have avoided. The Applicant has lived off of credit cards and fell behind on his bills, including child support payments. In 1997, he finally obtained a full time job. He and his wife separated in 2001, and he was left with four children to support. This situation caused additional financial difficulties.

Since 2001, the Applicant has tried his best to pay his delinquent debts. He has reduced his gas bill from \$233.00 to \$2.37. (See Applicant's Exhibit A). His back due child support in the amount of \$16,000.00 has been reduced to \$4,900.00, and for the past four or five years has been paid through garnishment of his wages and tax refunds. (Tr. p.38). His credit card debts in the separate amounts of \$3,350.00 and \$3,622.00, have not yet been addressed. Another credit card debt in the amount of \$1,841.00 is being paid at \$100.00 a month. He indicates that he will pay these debts as soon as possible. The two judgments that were entered against him in 1980 and 1993, in the amounts of \$1,975.00 and \$1,052.00, he was not aware of. He intends to immediately contact these creditors and set up a payment plan. The court records indicate that the Applicant was not personally served with the lawsuit regarding the 1993 judgment. The Applicant understands that he must satisfy all of his delinquent debts either by paying them off at once or by making monthly payments until they are paid.

His personal financial statement dated January 27, 2004, indicates that he is current on his monthly expenses and at the end of the month has \$1,941.00 in disposable income to pay his bills. (See Government Exhibit 5). He is using that disposable income to do just that.

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 November 22, 1999. Question 37 of the application asked the Applicant if in the last seven years he had any judgments against him that have not been paid. The Applicant answered, "NO." He failed to disclose the judgment entered against him by a bank in the amount of \$1,975.00. (See Government Exhibit 1).

The same application, at question 40, asked the Applicant if in the last seven years he had been a party to any public record civil court actions not listed elsewhere on this form. The Applicant answered, "NO." The Applicant failed to list the civil court action related to the foreclosure on his loan on the mobile home. (See Government Exhibit 1). The Applicant also failed to list the civil court action concerning why arrears should not be set in the paternity suit brought forth by a state's Department of Health and Human Services. (See Government Exhibit 1).

Based upon the evidence presented, I do not find that the Applicant intentionally sought to conceal information from the Government when he answered questions 37, and 40, on his security clearance application. The Applicant testified that he was not aware of the foreclosure action, or any civil court action or judgment that had ever been brought or entered

against him. He also corroborated this in a statement to DSS dated January 22, 2001. (*See* Government Exhibit 2). I find his testimony credible. Accordingly, I find for the Applicant under this guideline.

Letters of recommendation submitted on behalf of the Applicant attest to his exceptional work ethics, reliability and trustworthiness on the job. He is friendly, courteous and well respected among his peers and with management. (*See* Applicant's Post-Hearing Exhibit).

Performance evaluations of the Applicant for 2005, reflect ratings from "average" to "outstanding". (*See* Applicant's 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 him 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 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, long periods of underemployment followed by lay-offs and unemployment primarily caused his financial problems. To further complicate matters, his son's illness and related medical bills caused him to leave his job and relocate. His marital separation also caused financial difficulties. These situations were at the time, largely beyond his control.

The Applicant's demeanor and testimony was sincere and believable. Since his marital separation, in 2001, the Applicant has reduced his debt and is continuing to do so. He is currently making payments toward some of his debts and is setting up payment plans to pay off the others. He will continue to pay his delinquent debts until they are paid off. He is working to re-establish his credit, pay his bills in a timely manner and budget 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. The Applicant was not aware of the foreclosure action, or any civil court action or judgment that had been brought or entered against him. The court record further substantiates his testimony. I cannot find that he deliberately sought to conceal the truth when answering the questions on the security clearance application. 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.

Paragraph 2: For the Applicant.

Subpara. 2.a.: For the Applicant.

Subpara. 2.b.: For the Applicant.

Subpara. 2.c.: 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