

DATE: August 31, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-04656

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's divorce followed by several unfortunate circumstances led to his excessive indebtedness. He has made a good faith effort to resolve his indebtedness and continues to work towards becoming debt free. Clearance is granted.

**STATEMENT OF THE CASE**

On May 17, 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 or revoke.

The Applicant responded to the SOR in writing on June 23, 2005, and requested an Administrative Determination without a hearing. A File of Relevant Material (FORM) was prepared on March 1, 2006, and was received by the Applicant on March 8, 2006. The Applicant responded to the FORM on April 3, 2006, and stated that he would like to change his request to a hearing. This case was assigned to the undersigned on April 20, 2006. On May 31, 2006, Department Counsel and the Applicant discussed their availability for the hearing date. At the time the Applicant indicated that he was available on June 20, 2006. A notice of hearing was issued on June 5, 2006, scheduling the hearing for June 20, 2006. Applicant requested a continuance of the hearing. The request for continuance was denied based upon the fact that the case has been pending for over a year and the Applicant has had sufficient time in which to properly respond to the SOR and to obtain supporting documentation for the hearing. At the hearing the Government presented six exhibits. The Applicant presented fifteen exhibits, and he testified on his own behalf. The Government moved to amend allegation 1(i) to reflect a delinquent amount owed in the amount of \$11,200.00 rather than \$112,000.00 which was obviously a typographical error. The motion was granted and the amendment was made. The record was left open for an additional ten days following the hearing to allow the Applicant an opportunity to submit additional supporting documentation. The Applicant submitted two Post-Hearing Exhibits referred to as A and B. Post-Hearing Exhibit A

consists of one page. Post Hearing Exhibit B consists of sixteen pages. The official transcript (Tr.) was received on June 29, 2006.

### **FINDINGS OF FACT**

The following Findings of Fact are based on the Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 53 years old, has a high school diploma and almost two years of college. He is employed by a defense contractor as a Software Systems Engineer 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 admits all of the delinquent debts set forth in the SOR, except 1(a), a debt to a creditor in the amount of \$2,441.00, 1(b), a debt in the amount of \$7,291.51 for a judgment entered against him in November 2000, and 1(d), a debt in the amount of \$4,671.00 for an account charged off in May 2002. (Tr. p. 30). The Applicant claims that he was the victim of identity fraud committed by his adopted daughter and he is disputing these debts. (Tr. p. 29). Documentation in the record reveals that he has filed a police report concerning the theft and is following the proper channels to ensure that a proper investigation is done in order to relieve him of responsibility. (See Applicant's Exhibit E).

The Applicant explained that his financial situation was in good standing until his divorce from his first wife in March 2000. The divorce caused serious financial difficulties that he has never been able to fully bounce back from. The Applicant's wife was initially awarded spousal support payments in the amount of \$1,500.00 a month which caused initial financial problems. After two years of these payments they were automatically increased to \$2,000.00 a month. (See Applicant's Exhibit C). The Applicant also became financially responsible for both his and her attorney fees which totaled about \$7,000.00. His wife received his entire 401(k), one-half of his two other retirement accounts, and 95 % of all of the furniture and assets they owned. The Applicant could no longer afford to pay his debts and he was not left with much. Credit reports of the Applicant indicate that he became indebted to nine different creditors in the total amount of approximately \$80,000.00. (See Government Exhibits 6 and 7). Following his divorce, more unexpected, unfortunate circumstances occurred.

Allegation 1(c). The Applicant testified that he purchased a used car for his teenaged son because he was doing well in school, but the car was not yet insured. His son drove the car without insurance and got into an accident. (Tr. p. 32). An insurance company obtained a judgment against the Applicant, his ex-wife and his son in the amount of \$32,000.00. The Applicant contends that he was never served and knew nothing about the default judgment until six months after it was entered. (Tr. p. 60). He looked into getting the judgment vacated but was told that it was too late. He initially stated that under the circumstances his son should be held solely responsible to pay the judgment. He later testified that rather than wait for his son to pay it, he will set up a payment plan and resolve the debt himself. (See Applicant's Exhibit F and Post-Hearing Exhibit A).

Allegation 1(e). The Applicant has paid the debt in the amount of \$1,678.00. (See Applicant's Exhibit G).

Allegation 1(f). The Applicant has set up a payment plan for a debt in the amount of \$11,000.00. He is paying \$100.00 a month toward the debt and has reduced it to about \$8,700.00. (Tr. p. 57).

Allegations 1(g) and 1(i). The Applicant contends that the debts set forth in these allegations are actually a judgment entered against him by a bank in the amount of \$11,200.00. The Applicant made two monthly payments of \$100.00 to the bank before they started garnishing his wages in the amount of \$587.00 per pay period. He filed a hardship with the court to have the garnishment reduced, and it was reduced to \$200.00 per pay period. Since this garnishment was implemented, he has reduced the debt from \$11,000.00 to about \$8,670.00. (See Applicant's Exhibits H and I).

Allegation 1(h). The Applicant has settled the debt in the amount of \$153.00 which was a joint account he had with his ex-wife. (See Applicant's Exhibit J).

He further testified that his attention was taken away from paying his debts when his grand daughter was seriously injured in a car accident on August 3, 2003. (Tr. p. 27 and Applicant's Exhibit D).

Each of the debts listed in the SOR have now been addressed to some degree. Several have been paid, others are in the process of being paid. The Applicant is working toward paying off all of his delinquent debt. He is current with all of his other monthly expenses and obviously has a handle on what he owes. He plans to file for an alimony reduction sometime soon. (See Applicant's Post-Hearing Exhibit B).

At the present time, the Applicant's current spouse has just become employed and the additional income will allow the Applicant to pay off his delinquent debts even sooner. The Applicant also indicates that he now has approximately \$45,000.00 in his 401(k) that was started following his divorce. In the event that it is necessary, he can borrow from his own account to pay his debts.

Six letters of recommendation, one from the Applicant's Project Manager and several others from coworkers of the Applicant, attest to the Applicant's good judgment, reliability and trustworthiness. He is considered to be a person who has excellent work ethics. He is always professional and hard working and provides a great value to the company. He is considered someone they can always depend on to get the job done. (See Applicant's Exhibit O).

Applicant's most recent credit reports from Equifax, Experian and Transunion show that he is current with all of his revolving credit accounts and that he has not accumulated any new debt. (See Applicant's Exhibits L, M, N and Post-Hearing Exhibit B).

### 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 individual has initiated a good faith effort to repay overdue 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 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). 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, circumstances beyond the Applicant's control caused his financial problems. Mainly, his divorce from his first wife caused this situation. He plans to file for an alimony reduction soon, however, in the meantime, his court ordered alimony payments will not go away. He will have to live with the situation until then. The trauma of his grand daughter's accident also caused him to lose focus on his debts. However, in light of this, he has set up payment plans and is making payments to his creditors and is in the process of reducing his debt. Although one of his debts is being paid through involuntary garnishment, he is voluntarily making payments to the others. In the past, he made some serious mistakes that have aggravated his financial situation. Purchasing a car for his son that did not have insurance, and possibly being too generous with his adopted daughter, has caused him additional problems he did not need. Hopefully, he has learned from these difficult experiences.

The Applicant understands that he must resolve his financial indebtedness. He has chosen to pay off his delinquent

debts. He is working hard to pay off his delinquent debts. He must continue this process in a systematic fashion. He must continue to demonstrate a good faith effort to pay off his past due creditors or resolve his financial indebtedness. He must live within his means and budget his finances accordingly. He must improve his credit standing. He must continue to demonstrate that he is worthy of the privilege of holding a security clearance, regardless of the unexpected circumstances in life that may come his way. Upon review of his financial statement, it appears that he may have only a small remainder at the end of the month, however, with his wife now working, they can afford to pay these bills off even faster. Although it has obviously been difficult, there is 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* both apply. However, 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 individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* also 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 his 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.

### **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