

DATE: November 28, 2005

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In Re:

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SSN:-----

Applicant for Security Clearance

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ISCR Case No. 04-06643

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's history of criminal conduct, involving a felony conviction for Burglary in 1999, and her continued financial indebtedness, has not been mitigated. Clearance is denied.

**STATEMENT OF THE CASE**

On June 6, 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, 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 on July 6, 2005, and she requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on August 17, 2005. A notice of hearing was issued on August 30, 2005, scheduling the hearing for September 29, 2005. At the hearing the Government presented eight exhibits. The Applicant presented one exhibit, consisting of four letters of recommendation, and testified on her own behalf. The record was left open until the close of business on October 7, 2005, to allow the Applicant the opportunity to supplement the record with supporting documentation. The Applicant failed to supplement the record. The official transcript (Tr.) was received on October 11, 2005.

**FINDINGS OF FACT**

The following Findings of Facts are based on the Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 25 years old and has a high school diploma and some junior college courses. She is employed as a Budget Analyst for a defense contractor. She seeks to obtain a security clearance in connection with her employment in the defense sector.

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 J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because she engaged in criminal conduct.

In 1998, at the age of eighteen, the Applicant moved out of her parents' home. At that point, she had a job that paid minimum wage, no medical coverage and was soon struggling financially. She agreed to marry a Marine who liked her, in order to be eligible to receive his military medical coverage and so he could get dependent pay. They were married for two months before the Applicant realized that what she had done was wrong, and she had the marriage annulled.

In October 1998, while working at a jewelry store, the Applicant stole a ring and a bracelet from her employer. She pawned it at a pawn shop for a couple of hundred dollars. She later stole a check from her co-worker's purse, endorsed the check to herself for approximately \$500.00 and forged the co-workers signature. She tried to cash the check at her bank, which was also the same bank on the check, but the bank refused to cash it. The Applicant later turned herself into the local police department, and admitted to charges of stealing and forging a check. It is not clear from the record whether the Applicant knew that the woman whose check was stolen had already reported the incident to the police when the Applicant turned herself in.

As a result of the police investigation, it was determined that numerous other items of jewelry were missing from the store. The police did an inventory of the items the Applicant had taken to the pawn shop and it was determined that many of them were from where the Applicant was employed. The Applicant contends that not all of the jewelry she pawned was from where she was employed. She contends that she was also purchasing jewelry on credit from three other stores, at the same time, and had been pawning that jewelry at the same pawn shop. She explained to the police that a co-worker was also responsible for stealing from the store. Nevertheless, the police accused the Applicant of stealing all of the missing items. (*See* Government Exhibit 4). The Applicant was charged with (1) Grand Theft, felony, (2) Thirteen Counts of Burglary, felony, and (3) Forgery of a Check. In 1999, the Applicant pled guilty to one Count of Burglary, and all remaining Counts were dismissed. The Applicant was placed on three years probation, fined \$200.00, and ordered to serve 45 days, pay restitution of \$2,920.00, attend anti-theft counseling program and disclose her conviction to prospective employers in which she would be trusted to handle an employer's inventory or money. (*See* Government Exhibit 5). The Applicant testified that she has learned great lessons from this mistake.

In July 2003, the Applicant's young daughter was taking a shower when she got soap in her eyes and started crying, hysterically. The Applicant grabbed her daughter's arm and slapped her on the stomach which left a red mark. Later that evening, the Applicant's daughter was disrespectful to the Applicant. The Applicant slapped her daughter on the mouth which drew blood and left a bruise. The following day, the Applicant took her daughter to child care and they reported the child's injuries to Child Protective Services (CPS). Apparently, this was the second complaint CPS had received on the Applicant. The Applicant's daughter was removed from the Applicant's home. Her daughter was returned to the home in September 2003.

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.

The Applicant explained that when she moved away from her parents home she experienced serious financial hardships. She ran up debt that she could not afford to pay. She pawned jewelry to get money for food, rent, utilities and general living expenses. She admits the delinquent debts set forth in allegations, 1(c), 1(f), and 1(g), and denies the delinquent debts set forth in allegations 1(a), 1(b), 1(d), and 1(e). (*See* Applicant's Answer to the SOR). Credit Reports of the Applicant indicate that she is indebted to each of the creditors listed in the SOR. (*See* Government Exhibits 6, 7, and 8). The Applicant testified that although she did not know about some of the debt, she believes that she is responsible to pay it, and is now in the process of cleaning up her delinquent debts. She states that she has paid the debts set forth in 1(a), and 1(b), but still owes the debts set forth in 1(c), 1(d), 1(f), and 1(g). The record was left open to allow the Applicant the opportunity to submit some documentation to support her testimony. She failed to do so.

Letters of recommendation by the Applicant's division head, program manager, coworkers and teammates attest to the Applicant's trustworthiness, talent and superior work quality. She is considered to be person with high ethical and moral

standards. She is hard working and considered an asset to the organization. (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 J (Criminal Conduct)

Conditions that could raise a security concern:

1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;
2. A single serious crime or multiple lesser offenses.

Condition that could mitigate security concerns:

None.

### 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 criminal conduct and 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 has engaged in criminal conduct (Guideline H) and 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 her 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.

The Applicant's criminal history involves a felony conviction for Burglary. She stole from her employer and from a co-worker. She also engaged in conduct that did not result in her arrest or conviction, but was criminal or bordered on it. Given the nature of the crime she committed and the conduct she engaged in, (an arranged marriage to receive medical benefits), and (possible incidents of child abuse), I find that her credibility is in question. Taken together, Applicant history and pattern of criminal conduct establishes that the exercise of poor judgment by her is not an aberration, but has been a basic part of Applicant's character for almost all of her adult life. It is noted that the Applicant was young and immature when the incidents occurred and she is still young.

Under Guideline J (Criminal Conduct), Disqualifying Conditions (1) *any criminal conduct, regardless of whether the person has been formally charged* and (2) *a single serious crime or multiple lesser offenses* are clearly applicable. None of the mitigating conditions apply. The Applicant's behavior indicates a pattern of intentional illegal or irresponsible conduct that raises serious doubt about her judgment, reliability and trustworthiness. Although the arrest and conviction occurred in 1999, six years ago, she has not shown that she has substantially matured over the years. In the context of the poor judgment and misconduct she engaged in, there is no substantive indication of a fundamental change in the Applicant's thinking process or character. She states that she has matured and has learned from her past, however, I do not see a remarkable change. She is obviously doing well on the job and she should continue to do so. Considering her past, it is simply too early in her rehabilitation to be eligible for access to classified information. On this basis, I conclude that the criminal conduct remains current and is clearly not an isolated incident (Mitigating Condition 1 and 2). There is also no clear indication of the Applicant's rehabilitation. Accordingly Guideline J is found against the Applicant.

The Applicant's delinquent debts only amount to a total of approximately \$4,200.00 that she claims are currently being paid. She has not provided any supporting documentation to substantiate her testimony. Her credibility is in question.

Without some documentation to show that she has paid what she says she has, I cannot find that she is making a good faith effort to pay off her past due creditors or resolve her financial indebtedness.

Upon review of her financial statement, it appears that she now has some disposable income at the end of the month that she could use to pay her past due bills. However, I cannot assume, without more, that she is paying them. Furthermore, she had not explained to me how she will resolve them. 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. Her financial problems remain current (MC)1; they are not isolated, (MC) 2; and the Applicant has not initiated a good faith effort to repay her overdue creditors or otherwise resolve her 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 her request for a security clearance. Accordingly, the evidence supports a finding against 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: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

Subpara. 2.c.: Against the Applicant.

Subpara. 2.d.: Against the Applicant.

Subpara. 2.e.: Against the Applicant.

Subpara. 2.f.: Against the Applicant.

Subpara. 2.g.: 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