

KEYWORD: Financial

DIGEST: The Applicant is in the process of financial rehabilitation, but has a long way to go before its completion. He remains indebted in the amount of approximately \$15,000. Sufficient mitigation has not been shown. Clearance is denied.

CASENO: 04-09536.h1

DATE: 01/19/2006

DATE: January 19, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-09536

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Candace Le'i, Department Counsel

**FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

The Applicant is in the process of financial rehabilitation, but has a long way to go before its completion. He remains indebted in the amount of approximately \$15,000. Sufficient mitigation has not been shown. Clearance is denied.

### **STATEMENT OF THE CASE**

On July 19, 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 August 12, 2005, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on September 22, 2005. A notice of hearing was issued on September 28, 2005, scheduling the hearing for November 22, 2005. At the hearing, the Government presented nine exhibits. The Applicant presented four exhibits and testified on his own behalf. The official transcript was received on December 12, 2005.

### **FINDINGS OF FACT**

The Applicant is 33 years old and married. He has an Associate Degree in Electronics and is employed by a defense

contractor as an Instrumentation Technician, and is seeking to retain his security clearance in connection with his employment.

The Government opposes the Applicant's request for a continued 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 his indebtedness to twelve separate creditors totaling in excess of \$60,000. (*See Applicant's Answer to SOR*). He attributes his indebtedness to being irresponsible and stupid. (Tr. p. 46). In 1997 or 1998, the Applicant was living out of state and lost his job. He explained that he had planned a vacation during a period of time in which the company wanted him to work. He took his vacation anyway. When he returned to work, he discovered that he no longer had a job. He was unemployed for three months and then worked either part-time or full time at a fast food restaurant. He earned only enough money to live on and to support his daughter. He was unable to pay his other monthly bills and they became delinquent.

In November 1999, he found other employment, but not long after that he was terminated again. The Applicant explained that on this occasion his daughter got sick with the chicken pox and he had no one to stay home with her. He stayed home to watch her, which caused his termination. He now realizes he should have hired someone to take care of her and gone to work. (Tr. P. 50).

In 2000, the Applicant moved out of the state to live with his parents and was hired for a full time position by his current employer. He now works about fifty hours a week. While living with his parents, he has paid off the bad checks he had written to creditors that were not listed in the SOR. His history of bad check writing has prevented him from obtaining a checking account. The Applicant indicated that many of those delinquent debts have been written off by the creditor's, but he intends to pay them in order to keep his job.

In 2002, the Applicant started addressing some of the delinquent debts listed in the SOR. He contends that he tries to tackle one debt at a time and then move on to the next debt. He contends that he has set up monthly payments with some of his creditors and is paying them down. He has submitted only four separate documents verifying that he has either settled with or is paying down the creditor as agreed. (*See Applicant's Exhibit A, B, C and D*). The others, he has not yet addressed. He indicates that he remains indebted to at least four of the creditors totaling approximately \$15,000. (Tr. p. 52). He plans to pay these debts by first offering an amount to settle the account and then paying at least one of them off with this year's income tax refund. The Applicant thought about filing for Bankruptcy, but was advised by his parents not to, if he wanted a government job. With that in mind, he plans to continue to pay off his delinquent debts as quickly

as possible, until he is debt free.

## **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). 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 not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case. It is noted that the Applicant's excessive indebtedness was initially caused by the fact that he was laid off from work for a short period and, when he became employed, he was not earning much. However, since 2000, he has been employed full time. He has either settled or is currently paying four of the creditors. (See Applicant's Exhibits 1(h), 1(i), 1(j) and 1(k). He still owes about \$15,000 in delinquent debt. Although he states that he will use his income tax refund to pay his outstanding delinquent debts there is insufficient evidence in the record to explain how he is going to do this. The Applicant has started the process of financial rehabilitation, but has a long way to go. There is little evidence to show that he has made or is making a good faith effort to pay off his past due creditors or resolve his financial indebtedness.

There is insufficient 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.: For the Applicant.

Subpara. 1.i.: For the Applicant.

Subpara. 1.j.: For the Applicant.

Subpara. 1.k.: For the Applicant.

Subpara. 1.l.: 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