

DATE: August 28, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 04-09889

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

Howard R. Gottlieb, Attorney At Law

**SYNOPSIS**

Applicant's circumstances beyond his control, including periods of job lay off, disability and a wife's drug problems, coupled with poor financial planning, have caused his financial indebtedness. After filing Bankruptcy and borrowing from his 401(k) to pay some of his debts, he still remains excessively indebted. Clearance is denied.

**STATEMENT OF THE CASE**

On July 27, 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 September 21, 2005, and November 7, 2005, requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on April 10, 2006. A notice of hearing was issued on May 2, 2006, scheduling the hearing for May 17, 2006. On May 16, 2006, Applicant's Counsel requested a continuance based upon good cause. Department Counsel had no objection and the matter was rescheduled for June 15, 2006. At the hearing the Government presented fourteen exhibits. The Applicant presented no exhibits, but he testified on his own behalf. The record was left open to allow the Applicant to supplement the record with documentation to support his testimony. The Applicant submitted one Post-Hearing Exhibit, consisting of 70 pages, which are his medical and disability records. The official transcript (Tr.) was received on June 27, 2006.

**FINDINGS OF FACT**

The following Findings of Fact are based on the Applicant's Answer to the SOR, the Government's fourteen exhibits, the Applicant's testimony, and the Applicant's Post-Hearing Exhibit.

The Applicant is 47 years old, married and has an eleventh grade education. He is employed by a defense contractor as a Transportation Operator General 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 each of the allegations set forth in the SOR. (*See Applicant's Answer to the SOR*). Over the past ten years, a series of unfortunate circumstances beyond the Applicant's control coupled with poor financial planning have caused him to be indebted in the sum of approximately \$48,000.00 to at least eleven separate creditors. (*See Government Exhibits 3,4, 5, 6 and 12* ). The Applicant's credit report shows that they include credit cards, medical bills, and car repossession deficiencies. (*See Government Exhibits 3, 4, 5, 6 and 12*).

In 1990, the Applicant got married and his wife started handling their finances. In 1993, they had their first child. To provide a home for his family, the Applicant obtained a loan to purchase a manufactured home and to construct the foundation for it. For some reason, the loan process took almost a year, and in order to finance the project in the meantime, the Applicant borrowed money from his 401(k). The new mortgage combined with their other debts proved to be more than he could financially handle.

In December 1993, while recovering from knee surgery, the Applicant was laid off from his job. Although he found temporary work, as a ditch digger, crane operator and trucker, he was not earning even half of what he made while working for the defense contractor. His main source of income became his unemployment benefits. He was on lay-off status for about three years and three months. During this period he was not able to pay many of his bills which caused them to become delinquent.

By 1995, he realized that he had to do something about his poor financial situation. He filed for Chapter 13 Bankruptcy relief. He soon realized, however, that the Chapter 13 did not help his situation, because his monthly court ordered child support payments were more than he earned monthly. In February 1996, he dismissed the Chapter 13. (*See Government Exhibit 10*). In June 1996, he petitioned for Chapter 7 and his debts of approximately \$151,682.00 were discharged. (*See Government Exhibit 11*).

In 1997, the Applicant was called back to work by the defense contractor. By this time, he had learned that his wife had not been paying their bills, and was spending money they did not have. He learned that their rent was three months behind, and that his wife had been borrowing money from a check cashing company. At this point, he took over the bill paying responsibilities. He borrowed from his 401(k) to pay the back rent and the balance of the credit card debt his wife had charged up. (Tr. p. 67).

From 1998 until 2003, the Applicant worked for the defense contractor. During the holidays in 2003, the Applicant discovered that his wife was using illegal drugs. He filed for divorce in June 2003, and it was finalized in 2005. His responsibilities were to pay child support and alimony. (*See Government Exhibit 8*). In July 2003, he was hurt on the job again and filed for disability. The Applicant was off work for eleven months. In May 2004, he returned to work for several months, injured himself again, and then went out on disability again in 2005. (*See Applicant's Post-Hearing Exhibit*).

The Applicant has not worked since August 2005, and remains on disability. His monthly disability benefits are approximately \$1,500.00 every twenty-two days. (Tr. p. 71). The Applicant's current earnings, while on disability, have not allowed him to pay his delinquent debts. In October 2005, he filed for Chapter 7 Bankruptcy to discharge approximately \$60,000.00 in debt. (Tr. pp. 64- 65). The Applicant testified that this was for credit card debt and the repossession of two vehicles. (*See Government Exhibit 14 and Tr. p. 65*). He claims that each of the debts listed in the SOR were discharged at that time. (Tr. p. 64). He testified that he is able to provide documentation to support this bankruptcy filing and discharge. (Tr. p. 68). The Applicant provided no documentary evidence of this bankruptcy. The record was left open after the hearing to provide the court with additional documentation. No bankruptcy records were

provided.

The Applicant testified that he is currently ordered to pay child support in the amount of \$1,600.00 a month which he does not have. He is presently not paying child support and is in arrears in the amount of approximately \$13,755.00. (Tr. p. 68). He has set up a payment plan and is paying \$100.00 a month and when he works his wages will be garnished in the amount of approximately \$425.00 a week. At the end of the month, he has about \$10.00 left. (Tr. p. 72). He has borrowed again his 401(k) and owes \$6,000.00 which is about a year past due. (Tr. p.72).

The Applicant also owes back taxes in the amount of \$1,500.00, and is making payments in the amount \$100.00 a month to pay it off. Since August 2005, the Applicant has not worked. Based upon his physical injuries, he believes that he is physically unable to do the job he did before he was injured.

### **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:

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. Admittedly, the Applicant's periods of disability, job lay-off, unemployment, and his wife's drug problem caused many of his financial problems. The Applicant now claims that the fourteen debts totaling the sum of approximately \$48,000.00 that are listed in the SOR have been discharged in his Chapter 7 bankruptcy. There is no documentary evidence in the record to support this. Without some documentary evidence showing that these debts were in fact discharged in his most recent Bankruptcy, there is no choice but to find that these debts remain owing.

Furthermore, he remains on disability, with a limited income, and states that he is physically unable to return to the job he held before he was injured. Presently, he remains behind in child support payments. Upon review of his financial statement, and the fact that his only source of income is his disability benefits, it appears that he does not have sufficient monies available to pay his debts. There is no evidence of financial rehabilitation. Assuming the debts listed in the SOR were discharged in Bankruptcy in 2005, he still has delinquent debts that he cannot afford to pay.

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, and (MC)1; they are not isolated (MC) 2. 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.: Against the Applicant.

Subpara. 1.i.: Against the Applicant.

Subpara. 1.j.: Against the Applicant.

Subpara. 1.k.: Against the Applicant.

Subpara. 1.l.: Against the Applicant.

Subpara. 1.m.: 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