

DATE: June 8, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-00886

## DECISION OF ADMINISTRATIVE JUDGE

**DARLENE LOKEY ANDERSON**

### APPEARANCES

#### FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant's history of financial indebtedness was caused by circumstances beyond her control, namely three divorces, unexpected illnesses and two deaths in the family. The Applicant has made a good faith effort to straighten up her credit by setting up payment plans and paying off some of her debts. She is working to resolve her financial indebtedness, and to improve her manner of handling her financial affairs. She understands that if she does not continue to pay her delinquent debts and clear up her credit report, her security clearance could once again be in jeopardy. Clearance is granted.

### 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 July 28, 2005, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 25, 2005. A notice of hearing was issued on February 7, 2006, scheduling the hearing for March 9, 2006. At the hearing the Government presented no exhibits. The Applicant presented one exhibit and testified on her own behalf. The record was initially left open until March 30, 2006, to allow the Applicant the opportunity to supplement the record with additional supporting documentation. The Applicant submitted two Post-Hearing Exhibits that will be referred to as A and B. On April 27, 2006, the Government made a Motion to Re-Open the Record in order to submit their six exhibits that were inadvertently left out, but were referenced during the Government's opening statement. The Applicant had no objection to the motion. The Government's motion was granted, and the Government submitted six exhibits that are marked and admitted into

evidence as Government Exhibits 1 through 6. On May 10, 2006, the Applicant submitted an additional Post Hearing Exhibit, referred to as C, consisting of three enclosures. The Government had no objection to the Applicant's submission. On May 16, 2006, the Applicant submitted an additional Post Hearing Exhibit, referred to as D, consisting of twenty-one pages. The Government had no objection. The Applicant's Post-Hearing Exhibits were all admitted into evidence. The official transcript (Tr.) was received on March 23, 2006.

### FINDINGS OF FACT

The Applicant is 38 years old and divorced. She is employed as a Video Supervisor by a defense contractor and is applying for a security clearance in connection with her 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 she is financially overextended and at risk to engage in illegal acts to generate funds.

The Applicant served in the United States Army from 1987 until 1995. Three divorces and two children later, the Applicant was left with all of the marital debts from each of the divorces and all of the financial responsibility required to support the children. Her first husband was in the military when they divorced. Her second husband was in the FBI. Although both fathers had good jobs, neither was willing to pay child support and so the Applicant was responsible to support her children by herself. She spent a lot of her money on child care, so she could work and provide for her children.

In 2000, the Applicant was diagnosed with ovarian cancer which caused additional financial difficulties. The following year, in 2001, the Applicant's mother, who lived out of state, was diagnosed with breast cancer and this started most of the Applicant's financial struggles. The Applicant's mother was unable to take care of herself and the Applicant felt compelled to pay for her mother's care instead of putting her in a nursing home. The Applicant hired a private nurse to care for her mother and spent money traveling with her children to see their grandmother. By 2002, the Applicant's mother's condition was terminal. Her mother had no life insurance and so when she passed away all of the funeral expenses were left for the Applicant to pay. In 2003, the Applicant's eldest brother died unexpectedly during gastro-bypass surgery. The Applicant was also left to pay his burial expenses.

As a result, the Applicant fell behind on her bills. Things have settled down and she is now able to make payments toward her delinquent debts as soon as possible. For the past two years she has received child support for her youngest child in the amount of \$200.00 a month. She learned in November that she would be receiving \$400.00 per month for her eldest daughter from that child's father. The additional income will also help her to pay down her debts sooner.

The Applicant admits each of the fourteen debts set forth in the SOR totaling approximately \$15,719.00, and contends that most of them have been paid or are in the process of being paid. Documentation from the Applicant shows that she has significantly improved her credit. (See Applicant's Post Hearing Exhibit C). With respect to allegation 1(b), the Applicant contends that she has paid the debt to the creditor in the amount of \$297.00. She is making payments to the creditor listed in allegation 1(c), in the amount of \$20.00 per month for a debt that totals \$432.00. The debt listed in allegation 1(d), in the amount of \$1,468.00, remains owing and unpaid. A debt to a creditor listed in allegation 1(e), in the amount of \$254.00 has been paid. The debt listed in allegation 1(f) in the amount of \$122.00, was also paid. Allegation 1(g), a debt in the amount of \$3,531.00 was originally not the Applicant's debt, but her ex-husbands. Since the Applicant's name is on the account, she understands that she is also responsible to pay it and she intends to. Allegation 1(h), a debt in the amount of \$893.00 was transferred to another credit card and the Applicant is current with the payments on that card. Allegation 1(i), a debt to a creditor in the amount of \$1,444.00 was paid last June. The Applicant is making monthly payments of \$100.00 a month toward a debt to a creditor in the amount of \$1,123.00, listed in allegation 1(j). A debt listed in allegation 1(k), in the amount of \$3,513.00 is currently being paid in bi-weekly installments of \$50.00. The Applicant has no knowledge of the debt set forth in allegation 1(l) in the amount of \$580.00 and she has not contacted the creditor, but she plans to. Allegation 1(n), a debt to a creditor in the amount of \$1,330.00 has been paid. (See Applicant's Exhibit A).

Applicant submitted a copy of her most recent credit report that shows that she has paid off some of her outstanding debt. However, her credit can and must continue to be improved.

## 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.

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 her 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 her a 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.

The extraordinary circumstances of this case warrants special consideration. The poor state of the Applicant's financial affairs was caused by a series of unfortunate circumstances that occurred in her life. Being left with the debt from three divorces, having the responsibility of supporting two children by herself, experiencing several unexpected serious illnesses, including her own, and two unexpected deaths in her family have all contributed to her financial situation. These devastating events were obviously beyond her control. The Applicant credibly testified that she understands the importance of paying her debts. She acknowledges her mistakes of the past, understanding that no matter what happens in life, you must always live within your means, and she promises to pay her bills on time from now on. Although she only provided the court with one receipt for payment of one of her debts, she credibly asserts that she has either paid off the other debtor, or has set up payment plans that she will follow to get them paid off as soon as possible. She plans to continue making regular monthly payments toward her delinquent debts until they are paid in full. Her present financial situation indicates that she is capable of paying these bills and she realizes that she must be careful to budget her money accordingly. If she spends money she does not have, and/or does not continue to pay her delinquent debts and stay current with her present bills, her security clearance may once again be in jeopardy. Clearly, 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).

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.

### **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