

DATE: June 16, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-03678

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Ray T. Blank, Jr., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's intentional falsifications on his security clearance application are a violation of Title 18, United States Code, Section 1001, a felony, and have not been mitigated. His financial indebtedness has been resolved. Clearance is denied.

**STATEMENT OF THE CASE**

On October 5, 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 October 19, 2005, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM), consisting of fourteen Government Exhibits referred to in the record as Government Exhibits 1 through 14, to the Applicant on December 21, 2005. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on December 30, 2005, and he submitted a reply dated February 25, 2006. There being no objection by Department Counsel as to the untimeliness of Applicant's Reply, it is admitted into evidence. The case was received by the undersigned for decision on February 23, 2006.

**FINDINGS OF FACT**

The following Findings of Fact are based on the Applicant's Answer to the SOR, and the contents of the FORM. The Applicant is thirty-one years old. He is employed by a defense contractor as a achine Operator 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 E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

The Applicant admits each of the allegations set forth under this guideline. The Applicant completed a Security Clearance Application (Standard Form 86) dated February 22, 2001. Question 19 of the application asked the Applicant if in the last seven years, had he consulted a mental health professional or another health care provider about a mental health related condition. The Applicant answered, "NO". (See Government Exhibit 4). This was a false answer. The Applicant failed to disclose that he received mental health treatment within the last seven years from March 10, 1999, to March 17, 1999, for a condition diagnosed as Paranoid Disorder and Major Depression. (See Government Exhibits 6, 7, 12, 13, and 14). The Applicant explained that he made the mistake of thinking that since he was doing better and had shown no signs of relapse there was no need to admit that he had been at a point in his life where he was weak and needed to consult a mental health professional. (See Government Exhibit 2).

The same questionnaire, at question 27, asked the Applicant, if since the age of 16 or in the last seven years, whichever is shorter, had he illegally used any controlled substance. The Applicant answered, "NO". (See Government Exhibit 4). This was a false answer. The Applicant failed to disclose that he used marijuana at least twice during the period from 1997 to January 1999. (See Government Exhibit 7). The Applicant explained that his recruiter suggested to him that he answer "no" to any questions concerning illegal drug activity because a "yes" answer could jeopardize his chances of obtaining a security clearance. (See Government Exhibit 2).

The same questionnaire, at question 34, asked the Applicant, if in the last seven years had his wages been garnished for any reason. The Applicant answered, "NO". (See Government Exhibit 4). This was a false answer. The Applicant failed to disclose that his wages were garnished seven times during the period from March 29, 1996, through September 30, 1996, and garnished two times during the period from February 7, 2001, to March 1, 2001. The Applicant explained that his recruiter suggested that financial questions be answered in a way not to affect his chances of obtaining a security clearance. (See Government Exhibit 2).

The same questionnaire, at question 35, asked the Applicant, if in the last seven years had he had any property repossessed for any reason. The Applicant answered, "NO". (See Government Exhibit 4). This was a false answer. The Applicant failed to disclose that his vehicle was repossessed in September 2000, for nonpayment. The Applicant states that his recruiter suggested that financial questions be answered in a way not to affect his chances of obtaining a security clearance. (See Government Exhibit 2). The deficiency judgment of \$8,282.00 has been settled. (See Applicant's Reply to FORM).

The same questionnaire, at question 37, asked the Applicant, if in the last seven years had he had any judgments against him that have not been paid. The Applicant answered, "NO". (See Government Exhibit 4). This was a false answer. The Applicant failed to disclose that a judgment was filed against him in September 2000, in the amount of \$645.80. The Applicant states that his recruiter suggested that financial questions be answered in a way not to affect his chances of obtaining a security clearance. (See Government Exhibit 2). This account has since been paid through garnishment. (See Government Exhibit 2).

The same questionnaire, at question 38, asked the Applicant, if in the last seven years had he been over 180 days delinquent on any debts. The Applicant answered, "NO". (See Government Exhibit 4). This was a false answer. The Applicant failed to disclose a delinquent debt in the amount of \$621.00 for an account that was charged off in September 1998, and a delinquent debt in the amount of \$77.00 for an account placed into collection in April 2000. . The Applicant states that his recruiter suggested that financial questions be answered in a way not to affect his chances of obtaining a security clearance. (See Government Exhibit 2). These accounts have since been paid in full. (See Government Exhibit 2).

In a signed sworn statement to the Defense Security Service dated June 9, 2004, the Applicant stated that he had used marijuana only one time in 1997, when in fact he had also used it in January 1999. (See Government Exhibit 7, and Applicant's Answer to the FORM). The Applicant explained that he did not initially remember the second time he tried

marijuana because it occurred during the period when his marriage was failing.

I find that the Applicant knew or should have known to reveal the truth about his mental health treatment, his use of illegal drugs and his delinquent financial history. Assuming his recruiter suggested that he not reveal accurate information on his security clearance application when he applied to enter the military, by now he should have matured and made the right decisions to tell the Government the truth. The variety of falsifications only add to the seriousness of his conduct. Common sense and good judgment are required as a prerequisite for access to classified information. The Applicant has not demonstrated these characteristics. Accordingly, I find that the Applicant deliberately attempted to conceal this information from the Government on his security clearance application.

Paragraph 2 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct.

The Applicant admits each of the allegations set forth under this guideline. As set forth above, the Applicant intentionally failed to list his mental health treatment, his use of illegal drugs and his delinquent financial history on his security clearance application in violation of Title 18, United States Code, Section 1001, a felony.

Paragraph 3 (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 admitted that he was indebted to a creditor in the amount of \$8,282.00 for the amount owed after his vehicle was repossessed and resold. On February 2, 2006, he entered into an agreement with the creditor to settle the account for \$4,150.00. The account was settled in full on February 25, 2006. (See Applicant's Reply to FORM). The Applicant contends that all of his current monthly expenses and other bills are being paid in a timely manner.

The Applicant apologized for his actions and viewed his opportunity to join the Army as a chance for him to get his life back together. When he joined the military he was deeply indebted. He states that during his military service he was able to pay off almost all of his past debts and establish a positive credit history. He feels indebted to the Army for giving him a chance to get his affairs in order, even though it may have been under some false pretenses when he joined. The Applicant states that he is presently not financially overextended. (See Government Exhibit 2).

## 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 E (Personal Conduct)

Condition that could raise a security concern:

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Condition that could mitigate security concerns:

None.

### 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.

Condition that could mitigate security concerns:

6. The individual 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 dishonesty, 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 him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant was untruthful on his security clearance application (Guideline E), and by doing so he has violated a federal criminal statute (Guideline J), and 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 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. With respect to Guideline E, the numerous falsifications in a variety of areas of inquiry on the Applicant's security clearance application, without a reasonable excuse, obviously does not entitle him to a security clearance. Despite the fact that he blames the Army recruiter for suggesting that he not provide adverse information on his security clearance application when he joined the military, by now he should have matured enough, used common sense, and acquired sufficient good judgment to be honest with the Government. He is currently employed with a defense contractor and is applying for access to classified information in that capacity. He has not been truthful with the Government. With the particular evidence that I have been provided, there is no reasonable excuse for his failure to answer the questions truthfully. Consequently, the evidence shows that the Applicant has not been honest with the Government regarding his mental health treatment, his use of illegal drugs and his delinquent financial history, and he sought to conceal the truth. Disqualifying Condition (2) *The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities* applies. None of the mitigating conditions are applicable. I find that the Applicant deliberately failed to reveal this information to the Government.

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. By deliberately falsifying his security clearance application, the Applicant has violated a federal criminal statute, Title 18, United States Codes, Section 1001, a felony. None of the mitigating conditions apply. On this basis, I conclude that the criminal conduct remains current and is clearly not an isolated incident (Mitigating Conditions 1 and 2). There is also no clear indication of the Applicant's rehabilitation. Accordingly, Guideline J is found against the Applicant.

The Applicant has settled his remaining delinquent debt and paid it off in full. He has made a good faith effort to his debts or otherwise resolve his financial indebtedness. 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* apply. However, Mitigating Condition (6) *The individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts* also applies. Accordingly, I find for 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 Paragraphs 1 and 2 of the Government's Statement of Reasons. Paragraph 3 is found for the Applicant.

## 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.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Paragraph 3: For the Applicant.

Subpara. 3.a.: For 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