

DATE: November 8, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 05-03856

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Circumstances beyond the Applicant's control, including his ex-girlfriend's addictions to alcohol and gambling, have caused his financial indebtedness. After separating from his girlfriend and taking custody of his two daughters, he remains excessively indebted. He has not yet began to address his financial indebtedness. Clearance is denied.

**STATEMENT OF THE CASE**

On November 29, 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 December 23, 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 ten Government documents to the Applicant on January 27, 2006. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on July 28, 2006. The Applicant submitted no reply to the FORM.

The case was transferred to the undersigned for resolution on October 3, 2006.

**FINDINGS OF FACT**

The following Findings of Fact are based on the Applicant's Answer to the SOR, and the Government's ten exhibits in the FORM .

The Applicant is 40 years old. He is employed by a defense contractor as a Electrical Integration Technician 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*). The Applicant was in an long term relationship that lasted eleven years, with the mother of his two daughters. During the last two or three years of the relationship the Applicant discovered that his girlfriend was addicted to gambling and alcohol. Although they were not married, their finances were intermingled. His girlfriend was responsible for paying all of the bills in the household. In December 2003, after picking up the mail and seeing collection notices, he became aware that their credit accounts had become delinquent and that his girlfriend had been using the money to finance her gambling and alcoholism. The Applicant claims that he began paying off as many bills as possible. The situation became so unhealthy for the Applicant that he ended the relationship with his girlfriend, took custody of his two daughters and moved out of state. The Applicant was unemployed for several months and he and his two daughters lived off of the proceeds from his 401(k) account which was only enough to pay for living expenses. The Applicant later learned that his ex-girlfriend allowed her car, which the Applicant had co-signed for, to be repossessed. The Applicant has not had the opportunity to pay any of these outstanding debts as of yet. His finances are improving now that he is a direct hire for his employer and he plans to start paying these delinquent debts soon. He remains indebted in the sum of approximately \$13,548.00 to at least four separate creditors. (*See Government Exhibit 3*). The Applicant's credit report shows that they include three credit cards and a car repossession. (*See Government Exhibits 5 and 9*).

### **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 ex-girlfriend's gambling and alcohol addiction caused many of his financial problems. The Applicant remains indebted to four creditors in the amount of \$13,548.00. There is no evidence to show that the Applicant has made any attempt to set up payment plans or pay his outstanding debts. Without some evidence showing that these debts were addressed in some fashion, there is no choice but to find that these debts remain owing.

Upon review of his financial statement, it appears that the Applicant earns enough money to pay these debts, either by way of monthly payments or in full. (*See* Government Exhibit 7). Despite this, 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. His financial problems remain current, (MC)1, and; 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.

### **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