

DATE: January 28, 1998

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 97-0064

**DECISION OF ADMINISTRATIVE JUDGE**

**LOKEY-ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Martin H. Mogul, Department Counsel

**FOR APPLICANT**

*Pro Se*

**STATEMENT OF THE CASE**

On February 25, 1997, 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 by Change 3, issued the attached Statement of Reasons (SOR) to ----- (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 March 19, 1997, and April 1, 1997. This case was transferred to the undersigned Administrative Judge on September 16, 1997, and a Notice of Hearing was issued on September 16, 1997.

A hearing was held on September 26, 1997, at which the Government presented eight documentary exhibits. The Applicant presented no documentary exhibits, and testified on his own behalf.

The last official transcript was received on October 6, 1997.

**FINDINGS OF FACT**

The undersigned Administrative Judge completely and thoroughly reviewed the evidence of record, and upon due consideration of the same, makes the following Findings of Fact:

The Applicant is 25 years old and married, and he has a high school diploma. He is employed by a defense contractor as a Security Officer, and he seeks a Secret-level 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 attached Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and criterion in the SOR:

Paragraph 1 (Criterion 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 met his wife in May 1995, and started purchasing things that he could not afford to impress her. He made many of the purchases knowing that he had no means or intention of paying for them. Among the items he purchased were a car stereo, compact disks, cassettes, jewelry, a computer, and a car. The Applicant admits that his past spending habits were foolish, irresponsible, and bordered on criminal. (See, Government Exhibit 2). The Applicant admits to being indebted to each of the creditors listed in the SOR, except subparagraph 1(e). The total debt which is still outstanding is an amount in excess of \$60,000.00. (See, Answer to SOR and Tr. Pgs. 15-21).

In addition to the debts alleged in the Statement of Reasons, the Applicant is aware of an additional \$3,000.00 that he owes to other creditors that are listed on his credit report. (Tr. Pg. 28).

The Applicant has not contacted most of the creditors because he cannot afford to pay them. The Applicant is considering filing Bankruptcy, to get a fresh start, but is awaiting his wife's grandfather's life insurance settlement to help him pay for it. The Applicant testified that his net monthly income is currently \$ 1000.00. (Tr. Pg. 25). After paying for his rent, his car payment, his car insurance, and his groceries, the Applicant has no available financial resources to pay his delinquent debts.

The Applicant settled an account with one of his creditors, and started making payments towards two others. (Tr. Pg. 14).

The Applicant was arrested on two separate occasions in 1995, for writing checks on insufficient funds. (Tr. Pgs. 29 and 30 ). In 1996, two of the Applicant's vehicles were repossessed because he did not have the money to make the monthly payments. (Tr. Pg. 34).

Paragraph 2 (Criterion 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.

On May 24, 1996, the Applicant completed an application for security clearance that required him to indicate whether in the last seven years he has ever been arrested, charged or cited. The Applicant responded, "no" to the question. (See, Government Exhibit 1, Question 26). The Applicant admitted that he intentionally failed to reveal his two arrests in 1995, for writing checks on non-sufficient funds, for fear that admitting the truth would jeopardize his job and his security clearance. (Tr. Pgs. 32-33).

Question 35, of the same application, required the Applicant to indicate whether in the last seven years he has ever had any property repossessed for any reason. Again, the Applicant responded "no" to the question. The Applicant admitted that he failed to reveal his two vehicle repossessions in 1996, for fear that admitting the truth would jeopardize his job and his security clearance. (Tr. Pgs. 34-35).

Question 38, of the same application, required the Applicant to indicate whether in the last seven years he has ever been over 180 days delinquent on any debt. The Applicant responded "no" to the question. The Applicant admitted that he intentionally failed to reveal the debts alleged in the Statement of Reasons because he feared that admitting the truth would jeopardize his job and his security clearance. (Tr. Pg. 35).

Question 39, of the same application, required the Applicant to indicate whether he was currently over 90 days delinquent on any debt. The Applicant responded "no" to the question. The Applicant admitted that he intentionally failed to reveal this information for fear that admitting the truth would jeopardize his job and his security clearance. (Tr. Pgs. 35-36).

Paragraph 3 (Criterion J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he violated a criminal statute.

As discussed above, the Applicant knowingly and wilfully provided false material information to DOD during the

clearance screening process. In so doing, the Applicant violated Title 18, United States Code, Section 1001, a felony.

## POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Criterion F (Financial Considerations)

#### Conditions that could raise a security concern:

- (1) A history of not meeting financial obligations;
- (3) an inability or unwillingness to satisfy debts.

#### Conditions that could mitigate security concerns include:

None.

### Criterion 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 statute, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

#### Conditions that could mitigate security concerns:

None.

### Criterion J (Criminal Conduct)

#### Conditions that could raise a security concern:

- (1) any criminal conduct, regardless of whether the person was formally charged;
- (2) a single serious crime or multiple lesser offenses

#### Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at page 2-1, "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. All 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 repeated instances of financial irresponsibility, serious dishonesty, and criminal conduct, 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 continued holding of a security clearance. If such a *prima facie* 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 *prima facie* case. The Applicant bears the ultimate of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by *prima facie* evidence that the Applicant has been financially irresponsible (Criterion F), that he has deliberately and intentionally falsified material facts on his security clearance application (Criterion E) and, that he has engaged in criminal conduct (Criterion J). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant.

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 *prima facie* case.

The Applicant has used poor judgment in handling his financial affairs. Since meeting his wife in May 1995, the Applicant has accumulated over \$60,000.00 in debt in an effort to impress her, without considering the consequences of his actions. The Applicant has been extremely careless and irresponsible. Furthermore, the Applicant has failed to

initiate any good faith effort to resolve his past due indebtedness, and presently remains indebted in an amount in excess of \$60,000.00. This conduct shows extreme poor judgment, unreliability, and untrustworthiness. Under the circumstances the Applicant fails to meet the eligibility requirement for a security clearance. Accordingly he has failed to meet his ultimate burden of persuasion under Criterion F, (Financial Irresponsibility).

Equally troubling in this case is the fact that the Applicant repeatedly lied to the Government on his security clearance application concerning his arrest history and his financial affairs. This conduct is clearly in violation of Title 18, United States Codes, Section 1001, which is a felony. The Government relies heavily upon the integrity and honesty of clearance holders. It is a negative factor for security clearance purposes where an Applicant has deliberately provided false information about the material aspects of his or her personal background. This Applicant cannot be considered trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Criterion E, (Personal Conduct) and Criterion J, (Criminal Conduct).

On balance, it is concluded that the Applicant has failed to overcome the Government's *prima facie* 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, 2 and 3 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.

Subparas. 1.a., through 1.t., (except 1.e.) Against the Applicant.

Subpara. 1.e., For the Applicant.

Paragraph 2: Against the Applicant.

Subparas. 2.a., through 2.d., Against the Applicant.

Paragraph 3: Against the Applicant.

Subparas. 3.a., 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