

DATE: January 27, 1999

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 98-0396

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Department Counsel

**FOR APPLICANT**

*Pro Se*

**STATEMENT OF THE CASE**

On June 15, 1998, 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 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 a clearance should be granted, continued, denied or revoked.

The Applicant responded to the SOR in writing on July 3, 1998, in which she 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) to the Applicant on October 27, 1998. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on November 4, 1998, and she submitted no reply.

This case was assigned to the undersigned for resolution on December 9, 1998.

**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 48 years old. She is employed by a defense contractor and seeks a DoD security clearance in connection with her employment in the defense industry.

The Government opposes the Applicant's request for a 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 J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because she has engaged in criminal conduct.

In March 1994, the Applicant was arrested for Forgery of Check, Possession of a Forged Driver's License, and Receiving Stolen Property. She pled guilty to Forgery of Check. She was sentenced to 15 days in jail, fined \$575.00, and placed on probation for two years. The Applicant initially claimed that she was only trying to buy some groceries with a check that a friend gave her, and that she was to get cash back. The Applicant also claimed that she did not remember whose name she signed on the back of the check, or what driver's license she used to cash the check. (See, Government Exhibit 10). In a later statement, the Applicant remembered that she had used her own driver's license to cash the check. (See, Government Exhibit 11). The police report indicates that the Applicant was trying to cash the check with a fraudulent driver's license, and that she signed the check using someone else's name besides her own. (See, Government Exhibit 4).

In February 1997, the Applicant was arrested for Burglary, Burglary in the second degree, and Passing a Fictitious Check. She pled guilty, was sentenced to 30 days in jail, ordered to pay restitution in the amount of approximately \$100.00, and to complete 18 days of community service. The Applicant initially explained that her purse was stolen which contained her identification, and that someone else used her identification to cash a check. (See, Government Exhibit 9). She later changed her version of the event and stated that she was at the bank, trying to cash a friend's check for him, and was told that there was no money in the account. (See, Government Exhibit 10). The police report indicates that the Applicant was trying to cash a stolen business check. It further indicates that the Applicant left the bank before the funds were verified, and that she left behind the check and her identification. (See, Government Exhibit 5). The Applicant denies ever obtaining or using the identification that was left at the bank, although she admits that it had her picture and signature on it. (See, Government Exhibit 10).

Paragraph 2 (Criterion E- Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because she intentionally falsified material aspects of her personal background during the clearance screening process.

In a sworn statement dated June 3, 1997, before a Special Agent from the Defense Investigative Service, (DIS), the Applicant stated that she was arrested in February 1997, because someone stole her purse, took her identification, and wrote bad checks. She also stated that she believed that she was found not guilty, and that everything had been resolved. (See, Government Exhibit 9). The police and court records indicate that the Applicant had in fact forged a stolen business check at a bank, and was found guilty. (See, Government Exhibits 5 and 6). The Applicant has still not paid the \$100.00 fine imposed by the court. (See, Government Exhibit 11).

In a sworn statement dated December 9, 1997, before a Special Agent from DIS, the Applicant denied having a driver's license that cited a specific street address during the events which led up to her 1997 arrest. (See, Subparagraph 2.b. of SOR, and Government Exhibit 10). The Applicant later recanted her earlier statement. She had in fact obtained and used a driver's license that cited a specific street address on it. (See, Government Exhibit 11).

I find that the Applicant knowingly and willfully provided false material information about the true extent of her past criminal involvement in her sworn statements to DIS on June 3, and December 9, 1997. As a consequence, she violated the felony provisions of Title 18, United States Code, Section 1001, pertaining to false official statements.

The evidentiary record has been reviewed, but it does not contain sufficient evidence in mitigation which will overcome or outweigh the negative effects of the Applicant's repeated false statements to DoD, all of which were provided under a certification of truth or a sworn oath.

Paragraph 3 (Criterion 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.

In November 1991, the Applicant filed Chapter 7 Bankruptcy and discharged approximately \$25,200.00. Following her bankruptcy, she continued to have financial problems, and has been unable to pay her bills. The Applicant states that she suffers from diabetes which has caused her to be absent from work for significant periods of time without income. (See, Government Exhibit 9). She also states that her illness caused her to file Bankruptcy in 1991. She is presently indebted to the following creditors:

Subparagraph 3(c) The Applicant denies her indebtedness to a creditor in the amount of approximately \$4,500.00, for a judgment entered against her in approximately October 1996. The Applicant's credit report reflects this judgment. (See, Government Exhibit 7). As of January 14, 1998, this debt has not been satisfied.

Subparagraph 3(d) The Applicant admits her indebtedness to a bank in the amount of approximately \$5,878.00, for a delinquent account since June 1995. As of January 14, 1998, this debt has not been satisfied.

Subparagraph 3(e) The Applicant admits her indebtedness to a creditor in the amount of approximately \$3,278.00, for a delinquent account since October 1995. As of January 14, 1998, this debt has not been satisfied.

Subparagraph 3(f) The Applicant admits her indebtedness to a bank in the amount of approximately \$5,876.00, for a delinquent account since April 1996. As of January 14, 1998, this debt has not been satisfied.

Subparagraph 3(g) The Applicant's vehicle was repossessed sometime after June 1997 because she was unable to make timely payments to the creditors holding the loan.

The Applicant's personal financial statement shows that her monthly net income is insufficient to make payments to her delinquent creditors. (See, Government Exhibit 9). The Applicant agrees that her current financial situation prevents her from paying any of her past due debts.

## **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 her 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 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.

### Criterion E (Personal Conduct)

#### Conditions 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;
- (3) deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination;

(5) a pattern of dishonesty or rule violations.

Conditions that could mitigate security concerns:

None.

Criterion 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 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).

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 a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in repeated instances of criminal conduct, personal conduct and financial irresponsibility which demonstrates poor judgment or unreliability on the Applicant's part.

Furthermore, the Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an Applicant has demonstrated a lack of respect for the law in his or her private affairs, there then exists the possibility that he or she may demonstrate the same attitude towards security rules and regulations.

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 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 or her a security clearance.

In this case the evidence shows that the Applicant was arrested in 1994 and 1997, twice within the last five years for check forgery or a similar charge. These recent crimes show a pattern of serious dishonesty. The Applicant was convicted on both occasions, and is technically in violation of her probation for failing to pay the \$100.00 fine imposed by the court as a result of her 1997 arrest.

The Applicant has also deliberately and intentionally lied to the government on two sworn statements in 1997, concerning the particulars of these arrests. Her versions of the arrests are inconsistent and unbelievable. Based upon this recent misconduct, I cannot find the Applicant credible or reliable.

The Applicant has also failed to respond to the File of Relevant Material, which leaves the record silent on the issue of rehabilitation. Under the circumstances, the Applicant cannot be deemed to be sufficiently rehabilitated in the area of her criminal conduct and personal conduct to warrant granting her security clearance request. Accordingly, I find against the Applicant under Criteria J, (Criminal Conduct) and E, (Personal Conduct).

With respect to the Applicant's financial difficulties, there is insufficient evidence in the record to support that she has been irresponsible in handling her financial affairs. Clearly her indebtedness is excessive and overdue. However, given her alleged medical condition, the existence of which she has consistently maintained, her claim that she has been unable to pay her bills due to missed work without pay is plausible. Under these circumstances, the Applicant's financial condition has been largely beyond her control. The Government has failed to offer any evidence to the contrary. Accordingly, Criterion F, (Financial Considerations) is found for the Applicant.

On balance, it is concluded that the Applicant has not overcome the Government's case opposing her request for a DoD 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.

## **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.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

Paragraph 3: 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 not clearly consistent with the interest of national security to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge