

DATE: October 30, 2007

In Re:

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SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 06-24674  
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**DECISION OF ADMINISTRATIVE JUDGE  
DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Goldstein, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's financial indebtedness remains outstanding. He has only recently entered into a debt management program to assist him in resolving his indebtedness and as of yet has made only one payment toward the program. More time is needed in order to show that he is financially responsible. His intentional falsifications on his security clearance concerning his delinquent financial history have also not been mitigated. Clearance is denied.

## **STATEMENT OF THE CASE**

On April 11, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 denied or revoked.

The Applicant responded to the SOR on May 14, 2007, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on June 22, 2007. A notice of hearing was issued on July 26, 2007, scheduling the hearing for August 16, 2007. The matter was rescheduled for September 13, 2007. At the hearing the Government presented eight exhibits. The Applicant presented three exhibits and testified on his own behalf. The record was left open until October 3, 2007, to allow the Applicant an opportunity to provide additional evidence. The Applicant submitted two Post-Hearing Exhibits, referred to as A and B that were admitted into evidence and the record was closed on October 4, 2007. The official transcript (Tr.) was received on September 24, 2007.

## **FINDINGS OF FACT**

The following Findings of Fact are based on the Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 41 years old and has a high school diploma and two years of college. He is employed by a defense contractor as a Core Battle System Computer Technician and is seeking to obtain a 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). After a complete and thorough review of the evidence in the record, and upon due consideration of the same, 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 a security clearance because he is financially overextended and at risk to engage in illegal acts to generate funds.

\_\_\_\_\_ The Applicant admits the delinquent debts set forth in allegations, 1(b), 1(c), 1(e), and 1(f). He denies the debts set forth in allegations 1(a), 1(d), and 1(g). (See Applicant's Answer to the SOR). The Applicant retired from the military as an E-6 and receives a monthly pension. Since 2004, he has been on assignment in Korea, working for a defense contractor 40 hours a week in a part-time position that offers no benefits under this contract. He and his wife have three children. They separated two years ago and he is paying her monthly child support. They plan to divorce when they return to the states.

Credit reports of the Applicant indicate that he is indebted to seven separate creditors totaling an amount in excess of \$17,000.00. (See Government Exhibits, 2, 3, 4, 5 and 6). A debt to Citibank in the amount of \$2,744.00 remains delinquent and outstanding. A debt to Cingular Wireless in the amount of \$175.00 remains delinquent and outstanding. The Applicant states that three days before the hearing, on September 10, 2007, he mailed a check for payment to another creditor, Brook Mays in the amount of \$395.00. The check has not yet cleared his account. A debt to Providian in the amount of \$5,826.00 remains outstanding. The Applicant states that he has paid off the debt to Midland or Fingerhut in the amount of \$215.00. A debt to Green Tree for a mobile home he cosigned for, in the amount of \$7,709.00 remains delinquent and outstanding. The Applicant has tried to contact several of the creditors, but has had difficulty doing so because of the time difference between the United States and Korea. (See Applicant's Answer to SOR).

At the time of the hearing, the Applicant had structured a proposed payment plan in order to pay off his outstanding debts, however, the plan had not been approved by any of his creditors. (See Applicant's Exhibit A).

The Applicant claims that he was not aware of these delinquent debts until they were brought to his attention by the investigative agent in July 2006. He blames his wife for charging up some of the credit cards, but admits that he was also a named party on the accounts. Assuming the Applicant did not know about these delinquent debts until he met with the investigator in July 2006, he still did not use good judgment or make a good faith effort to resolve them in a timely fashion.

Applicant's Post-Hearing Exhibits contain documentation showing that on September 17, 2007, after the hearing, he contacted a consumer credit counselor and set up a debt management agreement that requires that he pay \$390.00 per month, his first payment being due September 19, 2007. Documentation shows that the Applicant made his first payment of \$390.00. (See Applicant's Post-Hearing Exhibits A and B).

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for a security clearance because he intentionally falsified material aspects of his personal background during the employment process.

The Applicant completed a Security Clearance application dated November 5, 2004. Question 38 of the application asked the Applicant if, in the last seven years, he has ever been more than 180 days delinquent on any debts. The Applicant answered, "NO". (See Government Exhibit 1). This was a false answer. The Applicant failed to disclose that he was over 180 days delinquent on the debts set forth in the SOR. (See Government Exhibit 1 and Applicant's Answer to the SOR).

Question 39 of the same application asked the Applicant if he was currently 90 days delinquent on any debts. The Applicant answered, "NO". (See Government Exhibit 1). This was a false answer. The Applicant explained that in response to both question 38 and 39, when he completed the application, he did not believe that he was behind on any of his debts. He stated that he only learned of these delinquent debts in July 2006, when the investigative agent brought them to his attention. Prior to this time, he had not reviewed his credit report and was simply not aware.

His wife handled the bills in the household and he did not know that he was as far behind as he was. (Tr. pp. 34-35).

I find that the Applicant knew or should have known about his delinquent debts and that he should have revealed them on his security clearance application. The Applicant held a security clearance during his career in the military and understood the importance associated with the security clearance application. He knew that the information on the application needed to be accurate and reliable. The fact that he had never looked at his credit report does not forgive the fact that he is responsible for knowing what credit accounts he has opened up and what he owes his creditors. He should have revealed this information on his application. Accordingly, I find that the Applicant deliberately attempted to conceal this information from the Government on his security clearance application.

### **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)**

18. *The Concern.* Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

#### **19. Conditions that could raise a security concern:**

- 19(a) inability or unwillingness to satisfy debts;
- 19(c) a history of not meeting financial obligations.

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

None.

#### **Guideline E (Personal Conduct)**

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's

reliability, trustworthiness and ability to protect classified information. OF special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

16. Condition that could raise a security concern:

16(a) 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.

\_\_\_\_\_ 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, a security clearance 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 such access may be involved in instances of financial irresponsibility and dishonesty 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) and he has been untruthful on his Public Trust Position application (Guideline E). 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 his finances, the Applicant has in excess of \$17,000.00 in delinquent debt. He has recently paid off two of the small debts, however, he has a long way to go before he is debt free. He has recently entered into a debt management agreement with a consumer counselor to assist him in paying off his delinquent debts, and at this time, he has made only one payment toward the program. He has just started to address his delinquent debts and has a long way to go before they are resolved. At the present time, he has not presented sufficient evidence to demonstrate a track record of financial responsibility or that he has resolved his financial indebtedness.

Upon review of his financial statement, it appears that he has some disposable income at the end of the month that he plans to use to pay his past due bills. However, at the present time, he has only started the process, and there is little evidence of financial rehabilitation. Under Guideline F (Financial Considerations), Disqualifying Conditions *19(a) inability or unwillingness to satisfy debts* and *19(c) a history of not meeting financial obligations* apply. None of the mitigating conditions apply. His financial problems remain current, they are not isolated, and the Applicant has not initiated a prompt, good faith effort to repay his overdue creditors or otherwise resolve his debts. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

With respect to Guideline E, the Applicant contends that he did not know about his delinquent debts. This excuse is unacceptable. The Applicant should have known about his debts and should have revealed these delinquent debts on his security clearance application. 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 completely honest with the Government regarding his financial history and he sought to conceal the truth. Disqualifying Condition *16(a) 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.

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.

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### **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.  
Subpara. 2.b.: Against the Applicant.

### **DECISION**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge