

DATE: June 24, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-10653

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Nichole L. Noel, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial indebtedness has not been mitigated by sufficient evidence of reform and rehabilitation. His intentional falsification on his security clearance application has also not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On November 10, 2003, 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 4, 2003, 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) to the Applicant on May 10, 2004. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on May 11, 2004, and he submitted a reply dated June 4, 2004.

The case was transferred to the undersigned for resolution on June 23, 2004.

FINDINGS OF FACT

The Applicant is a 43 years old. He is employed by a defense contractor as a Customer Service Representative 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). 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, except 1(b). One of the debts is being paid through automatic payroll deductions. The other debts that are listed are still owed and remain delinquent. The Applicant explained that his financial problems began when he purchased a new car in the summer of 2001. The new car purchase increased his monthly expenses. However, it appears from the record that the Applicant's financial problems occurred several years prior to 2001. (*See* Government Items 6 and 8).

The Applicant is indebted to a creditor for an account placed into collection in the approximate amount of \$179.00. As of April 2003, this debt had not been paid. The Applicant contends that the debt will be discharged when he can afford to file for bankruptcy. (*See* Government Item 2). There is no documentary evidence in the record to support the fact that the Applicant has filed for bankruptcy and discharged the debt. In fact, his credit reports shows that the debt remains outstanding.

The Applicant is indebted to a creditor for an account placed into collection in the approximate amount of \$300.00. As of April 2003, this debt had not been paid. The Applicant contends that this debt was for cable boxes that he returned to the company and should not be charged for. The Applicant's credit report shows that the debt remains outstanding. (*See* Government Items 6 and 8).

The Applicant is indebted to a creditor for a delinquent account in the approximate amount of \$979.00. As of April 2003, this debt has not been paid. The Applicant contends that the debt will be discharged when he can afford to file for bankruptcy. There is no documentary evidence in the record to support the fact that the Applicant has filed for bankruptcy and discharged the debt. In fact, his credit reports shows that the debt remains outstanding. (*See* Government Item 2)

The Applicant is indebted to a creditor for a delinquent account in the approximate amount of \$572.00. As of April 2003, this debt had not been paid. This Applicant contends that the debt will be discharged when he can afford to file for bankruptcy. There is no documentary evidence in the record to support the fact that the Applicant has filed for bankruptcy and discharged the debt. In fact, his credit reports shows that the debt remains outstanding. (*See* Government Item 2)

The Applicant is indebted to a creditor for a delinquent account in the approximate amount of \$5,462.00. As of April 2003, this debt had not been paid. The Applicant contends that the debt will be discharged when he can afford to file for bankruptcy. There is no documentary evidence in the record to support the fact that the Applicant has filed for bankruptcy and discharged the debt. In fact, his credit reports shows that the debt remains outstanding. (*See* Government Item 2)

The Applicant is indebted to the Internal Revenue Service (IRS) for delinquent back taxes in the approximate amount of \$4,574.25. As of April 2003, this debt had not been paid. This Applicant is currently paying \$200.00 a month to the IRS through payroll deductions. (*See* Government Item 2 and Applicant's Reply to FORM).

The Applicant is indebted to a creditor for an account placed into collections in the approximate amount of \$50.00. As of April 2003, this debt had not been paid. The Applicant contends that the debt will be discharged when he can afford to file for bankruptcy. There is no documentary evidence in the record to support the fact that the Applicant has filed for bankruptcy and discharged the debt. In fact, his credit reports shows that the debt remains outstanding. (*See* Government Item 2).

The Applicant's Personal Financial Statement dated November 12, 2001, indicates that he has a negative monthly remainder of \$337.00 which includes no payments to any of his outstanding creditors. (*See* Government Item 5).

The Applicant's total past due indebtedness is approximately \$12,116.00. The Applicant indicates that his finances are very tight. Another creditor not listed in the SOR garnid his payroll check in the amount of \$150.00 per month. He

monthly expenses include paying rent and utilities of \$300.00, child support of \$427.00, the IRS \$200.00, a creditor \$150.00 and medication \$150.00. His other bills are temporarily being paid by his mother. The Applicant claims that he is no longer financially extended as he has made arrangements to reduce his debt. He further indicates that he has no other choice than to file bankruptcy. (See Applicant's Reply to the FORM).

Paragraph 2 (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 denies the allegations set forth under this guideline in the SOR.

The Applicant completed a security clearance application dated October 26, 2000. Question 38 of the application asked him if in the last seven years, he has been over 180 days delinquent on any debt? The Applicant answered "NO". (See Government Item 4). This was a false answer. The Applicant was actually indebted to each of the creditors listed above. He claims that he did not know that he was indebted to these creditors until his interview with DSS. I do not find him credible. Possibly one or two delinquent debts could be overlooked by mistake or unknown, but not seven. (See Government Item 2).

Question 36 of the same application, asked the Applicant if in the last seven years, he has had a lien placed against his property for failing to pay taxes or other debts? The Applicant again answered "NO". (See Government Item 4). This was also a false answer. The Applicant states that he did not have a lien placed against him until October 2003, several years after completing the application. There is no evidence in the record to establish that a lien was filed against the Applicant within the seven years preceding the date he completed the application. Thus, I find that the Applicant did not falsify this information from the government. Accordingly, allegation 2(b) is found for the Applicant.

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.

Condition that could mitigate security concerns include:

None.

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 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 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 her a security clearance.

In this case the Government has met its initial burden of proving that the Applicant was financially irresponsible (Guideline F) and that he falsified information on his security clearance 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 a history of excessive indebtedness and has made no effort to pay his

outstanding debts or to further resolve his financial situation. The Applicant's total indebtedness is in excess of \$12,116.00. He claims that he will file bankruptcy to discharge his debts, but he has provided nothing more. Bankruptcy protection is a valid legal and recognized method of ending legal responsibility for debts under the right circumstances. Filing for bankruptcy protection may be a responsible means of resolving this Applicant's debts, however he has not done so. It is clearly beyond his ability to pay his delinquent debts at this time. Disqualifying conditions (DC)1, a history of not meeting financial obligations; and (DC) 3, an inability or unwillingness to satisfy debts, apply and have not been mitigated. The Applicant's financial problems remain current, (MC)1, they are not isolated, (MC) 2, and the Applicant has not initiated a good faith effort to repay his overdue creditors or otherwise resolve his debts (MC) 3. Consequently, I must find that none of the mitigation factors set forth in the Directive under Guideline F apply. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

Allegation 2(b) is found for the Applicant. However, it is unclear from the record why the Applicant did not reveal his financial indebtedness in response to question 38 on his security clearance application. He knew or should have known that he was required to provide this information. Consequently, the evidence proves that the Applicant has not been completely honest with the Government regarding his delinquent debts. I find that the Applicant deliberately failed to reveal this information to the Government. None of the mitigation factors set forth in the Directive under Guideline E apply.

The Government relies heavily upon the integrity and honesty of clearance holders. It is a negative factor for security clearance purposes when an Applicant has deliberately provided false information about material aspects of his personal background. This Applicant has not demonstrated that he is trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline E (Personal Conduct).

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.

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.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: 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