

DATE: March 3, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-08198

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Mark E. Curry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's history of excessive indebtedness, beginning in 1992 and continuing until at least 1999, has not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On August 20, 2002, 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 September 12, 2002, 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 1, 2002. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on October 10, 2002, and she submitted a reply dated October 17, 2002.

The case was assigned to the undersigned for resolution on October 28, 2002.

FINDINGS OF FACT

The Applicant is 27 years old. She is employed as an Applications Software Developer by a defense contractor. She is applying for a security clearance in connection with her 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 she is financially overextended and at risk to engage in illegal acts to generate funds.

In 1992, when the Applicant began her college education, until at least 1999, she acquired tremendous debt due to financial ignorance, improper budgeting, and living beyond her means. Since graduating from college, and being presently employed in the business world, she has become aware that it is important for her, in a professional environment, to resolve her bad credit issues and maintain a good credit history. She has made an attempt to pay off some of her outstanding bills, but she still has some work to do before she has completely paid off her numerous delinquent creditors. The Applicant has admitted to owing the debts listed in the SOR set forth under subparagraphs 1. (a.), 1.(b.), 1.(c.),1.(d.), 1(e.), 1(h.),1(j.),1(k.), 1(l.), 1(m.), 1(n.), and 1(r.). Those debts set forth under subparagraphs 1(f.), 1(g.), 1(i.), 1(o.), 1(p.), and 1(q.), have been paid in full. (*See, Applicant's Answer to the SOR dated September 12, 2002*).

The Applicant remains indebted to several creditors, including a credit management company, in the amount of \$283.00; a telephone company for two accounts in the amount of \$75.00 and \$225.00; a creditor in the amount of \$3,912.00; a physician for \$278.51; a creditor for \$400.50; a fitness center for \$300.00; a creditor for \$8,591.00; and she has defaulted on 11 student loan accounts with the United States Department of Education totaling \$35,496.00. (*See, Applicant's Answer to SOR*).

Several judgments were also entered against the Applicant in favor of her delinquent creditors. In March 1996, a judgment was entered against her in favor of a hospital, in the amount of \$608.00. The account was placed into collection in January 2001. In May 2000, a judgment was entered against the Applicant in favor of a car dealership, in the amount of \$1,333.00. In August 2000, a judgement was entered against the Applicant in favor of a landlord, in the amount of \$700.91. (*See, Applicant's Answer to SOR*).

In the Applicant's Personal Financial Statement dated July 7, 2000, she indicated that she was, at that time, making payments to a creditor in the amount of \$25.00, to whom she owed a total debt of \$300.00. (*See, Government Item 5*). In her Answer to the SOR, dated September 12, 2002, she states that she still owes \$300.00 to that same creditor, although two years has passed. (*See, Government Item 3*).

The Applicant states that she has been in contact with all of her creditors and she has set up payment arrangements with each of them. She intends to make regular monthly payments to each of her creditors until she has satisfied her remaining debts. She has recently obtained a part-time job to supplement her income, in order to pay her debts off at a faster pace.

Paragraph 2 (Guideline 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.

The Applicant completed a Questionnaire for National Security Positions (Standard Form 86) dated September 29, 1998. In response to question 37, which asked, "In the last seven years have you had any judgments against you that have not been paid?" the Applicant answered "No". (*See, Government Item 4*). This was not a truthful statement. The truth is that the Applicant had a judgment entered against her in March 1996, in favor of a hospital, in the amount of \$608.00. (*See, Government Item 9*). The Applicant explained that she was not made aware of the judgment until after her interview with the Defense Security Service in 2001.

The same questionnaire asked the Applicant in question 38, "In the last seven years, have you been over 180 days delinquent on any debt(s)?" The Applicant failed to disclose one creditor to whom she was indeed over 180 days delinquent. (*See, Government Item 4*).

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.

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

Conditions 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, 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 financial irresponsibility 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 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 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, except in part.

The allegations of falsification involve the Applicant's responses to Questions 37 and 38 on her security clearance application of September 29, 1998. Given the scale of her delinquent debts, her explanation that she did not know that she had an outstanding judgment is credible. She obviously did not keep good financial records. For the same reason, she may not have known whether she was delinquent with one particular creditor for more 180 days within the last seven years. Under the circumstances, I find that the Applicant's conduct was not deliberate or with the intent to conceal information from the Government. Accordingly, Guideline E (Personal Conduct) is found for the Applicant.

The evidence shows that the Applicant has a long history of excessive financial indebtedness. During the years she attended college, she incurred enormous debt and was either unable or unwilling to pay her bills. Recently, since joining the work force, she has realized the importance of maintaining good credit. The Applicant admits to her mistakes and bad financial judgment in the past. She has made an effort to pay off some of her outstanding debt. However, she has not shown a systematic pattern of payment or an ability to properly manage her finances over any significant period of time. In conclusion, the Applicant has had mixed success with her implementation of payment plans in the past. Assuming the Applicant continues to pay off her delinquent debts without incurring excessive new debt, and demonstrates that she is able to properly manage her finances, she may be eligible for a security clearance in the future. However, at the present time, her past excessive debt is substantial and her access to classified information could place the Government at significant risk. Accordingly, Guideline F (Financial Considerations) is found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing her 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. Paragraph 2 is found for the Applicant.

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.: For the Applicant.

Subpara. 1.g.: For the Applicant.

Subpara. 1.h.: Against the Applicant.

Subpara. 1.i.: For the Applicant.

Subpara. 1.j.: Against the Applicant.

Subpara. 1.k.: Against the Applicant.

Subpara. 1.l.: Against the Applicant.

Subpara. 1.m.: Against the Applicant.

Subpara. 1.n.: Against the Applicant.

Subpara. 1.o.: For the Applicant.

Subpara. 1.p.: For the Applicant.

Subpara. 1.q.: For the Applicant.

Subpara. 1.r.: For the Applicant.

Paragraph 2: For the Applicant.

Subpara. 2.a.: For 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