

DATE: November 24, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-08845

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial delinquencies have been mitigated by a good faith effort to pay his outstanding indebtedness. However, Applicant's foreign contact consists of his wife who is a citizen of Vietnam. There is no evidence in the record as to whether his wife is or is not affiliated in any capacity with the Vietnamese government, or in a position to be exploited by Vietnam in a way that could force the Applicant to choose between the loyalty to his wife and the United States. No mitigation has been shown. Clearance is denied.

STATEMENT OF THE CASE

On February 28, 2003, 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 in writing on March 27, 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 27, 2003. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on June 16, 2003, and he submitted a response dated June 26, 2003.

The case was assigned to the undersigned for resolution on September 3, 2003.

FINDINGS OF FACT

The Applicant is 34 years old and married. He is employed by a defense contractor as a 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). 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 has admitted to each of the allegations in the SOR. He admits to financial difficulties in the past based upon the fact that he had other financial priorities. As a result, the Applicant remains indebted to the following creditors set forth in the SOR:

Subparagraph 1(a) The Applicant was indebted to a bank in the approximate amount of \$1,498.00 for a credit card that has been charged off. As of December 20, 2002, this debt had not been paid. The Applicant is currently making payments to the creditor. (*See, Applicant's Response to SOR*).

Subparagraph 1(b) The Applicant was indebted to a bank in the approximate amount of \$545.00. As of December 20, 2002, this debt had not been paid. The Applicant is currently making payment to the creditor. (*See, Applicant's Response to SOR*).

In his personal financial statement to the Defense Security Service (DSS) dated January 6, 2003, the Applicant admitted that he was not financially capable of paying his debts because he was spending \$320.00 a month traveling to Saipan to visit his wife. (*See, Applicant's Response to SOR*). A letter from an individual from whom the Applicant borrowed \$2,500.00 in October 2002, indicates that the Applicant made monthly payments of \$500.00 without missing a payment until the debt was completely satisfied in February 2003. (*See, Applicant's Response to SOR*). Since then, the Applicant has been paying off his other outstanding indebtedness.

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant is a United States citizen and currently resides in Guam. I do not find that this allegation has any security significance. Accordingly, subparagraph 2(b), is found for the Applicant. The Applicant's wife is a citizen of Vietnam. There is no other evidence in the record concerning any other foreign contacts the Applicant may have with Vietnam.

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:

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:

6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Foreign Influence

A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Condition that could raise a security concern:

1. An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.

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 eligible for a security clearance. 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

The Government must make out a case under Guideline F, (Financial Considerations) and Guideline B, (Foreign Influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

In this case the Government has met its initial burden of proving that the Applicant has been financial irresponsible (Guideline F), and that he has a foreign contact that could create the potential for foreign influence (Guideline B). 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.

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegation set forth under Guideline B, and that Applicant's foreign contact has a direct impact on his suitability for access to classified information.

The Applicant has admitted to several delinquent debts brought on by financial irresponsibility. Recently, he has made a good faith effort and shown a systematic pattern of payment to improve his financial situation. Accordingly, Guideline F is found for the Applicant.

With respect to Guideline B, the evidence establishes that the Applicant's foreign ties subject him to foreign influence. The Applicant's wife is a citizen of Vietnam. It is the Applicant's burden to demonstrate that his foreign contact does not make him subject to coercion or blackmail. The Applicant has failed to submit any evidence in mitigation that would mitigate the negative impact his foreign contact has on his security worthiness. The record is void as to whether the Applicant's wife is or is not affiliated in any capacity with the Vietnamese government, or in a position to be exploited by Vietnam in a way that could force the Applicant to choose between the loyalty to his wife and to the United States. Therefore, mitigating factor 1 under Foreign Influence does not apply, since a possible security risk exists. At this time, I cannot find that it is clearly consistent with the national interest to grant the Applicant a security clearance. Accordingly, Guideline B (Foreign Influence) is found against 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: For the Applicant.

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Paragraph 2: Against the Applicant.

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: For 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