

DATE: May 23, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-09715

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's excessive indebtedness, and her arrest and conviction for methamphetamine use and possession, have not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On December 4, 2001, 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, 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 January 22, 2002, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on February 26, 2002. A notice of hearing was issued on March 1, 2002. The hearing was rescheduled and held on April 12, 2002, at which the Government presented six exhibits. The Applicant presented six exhibits. The Applicant testified on his own behalf. Applicant submitted one Post-Hearing Exhibit consisting of four documents, referred to as 1 through 4. The official transcript (Tr.) was received on April 25, 2002.

FINDINGS OF FACT

The Applicant is 42 years old, married, and has a high school diploma. She is employed by a defense contractor as an Electronic Technician, and is seeking to retain her security clearance in connection with her employment.

The Government opposes the Applicant's request for a continued 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.

The Applicant admits that she is indebted to several creditors. Following her arrest in 1996, she was unemployed from 1997 through May 1998. During this period, she lived off of her credit cards, and became excessively indebted. Although in her answer to the SOR she stated that she intended to file bankruptcy, based upon the advice of her attorney, she has since changed her mind, and now intends to make monthly payments to pay off each of her creditors.

Subparagraph 1(a) The Applicant admits that she is indebted to a creditor in the amount of approximately \$4,597.00 for a delinquent account since August 1996. Due to financial hardship, the Applicant has been unable to make the payments. (Tr. p. 83).

Subparagraph 1(b) The Applicant admits that she is indebted to a creditor in the amount of \$220.00 for a delinquent account. Due to financial hardship, the Applicant has been unable to make the payments.

Subparagraph 1(c) The Applicant admits that she is indebted to a creditor in the amount of approximately \$7,779.00 for a delinquent account since September 1996. Due to financial hardship, the Applicant has been unable to make the payments.

Subparagraph 1(d) The Applicant admits that she was indebted to a creditor in the amount of \$69.00 for a delinquent account since October 1999. The Applicant stated that she paid this debt. (Tr. p. 88).

Subparagraph 1(e) The Applicant admits that she is indebted to a creditor in the amount of \$9,954.00 for a delinquent account since January 1997. Due to financial hardship, the Applicant has been unable to make the payments.

Subparagraph 1(f) The Applicant admits that she is indebted to a creditor in the amount of \$378.00 for a delinquent account. Due to financial hardship, the Applicant has been unable to make the payments.

Subparagraph 1(g) The Applicant admits that she was indebted to a creditor in the amount of approximately \$168.00 for a delinquent account since August 1999. The Applicant stated that this account has been paid. (Tr. p. 91).

Subparagraph 1(h) The Applicant admits that she is indebted to a creditor in the amount of \$4,457.00 for a delinquent account since July 1998. Due to financial hardship, the Applicant has been unable to make the payments.

Subparagraph 1(I) The Applicant admits that she was indebted to the state tax authority in the amount of \$2,956.00 for a lien filed in March 2000. The Applicant submitted evidence indicating that the lien was released in December 2000. (See, Applicant's Post-Hearing Exhibit 3).

The Applicant remains indebted in the total amount of approximately \$24,000.00. Her most recent 2002 budget indicates that she is financially capable of paying \$400.00 a month toward her delinquent debts, with a net remainder of \$184.00 after her current expenses. (See, Applicant's Post-Hearing Exhibit 2). The Applicant has recently gone through financial counseling through the church. She has worked out a budget schedule to pay off her debts.

Paragraph 2 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because she engaged in criminal conduct.

The Applicant was arrested on December 26, 1996, and charged with (1) Possession of a controlled substance, a felony, (2) Possession of a controlled substance for sale, a felony, and (3) Under the influence of a controlled substance, a misdemeanor. The Applicant explained that she had repaired a VCR for a customer, who came to pick it up. She was busy packing some collectible coins she was taking to have appraised. Her customer said he had two jars of cleaning solution in his car that he was afraid might break from the heat. He asked if he could bring them in to cool off. She allowed him to do so, and forgot about it. She left the house to have the coins appraised. Her husband at the time, returned home and called the police to report that the coins had been stolen. When the Applicant learned that the police were at her house for stolen coins, she told her husband that she had taken them to have them appraised because she had

filed for divorce and knew that they were community property. Sometime later the Applicant was contacted by the police who indicated that the jars contained speed. Several weeks later, the police discovered speed at her boyfriend's house where she was staying.

On October 1, 1997, the Applicant was found guilty by a jury of counts 2 and 3 and was sentenced to probation for five years, to serve one year in custody of the county sheriff, to seek a drug counseling program and to continue until successful completion or termination by probation department, pay a fine of \$50.00, a fee of \$100.00 and penalty of \$170.00, pay restitution of \$200.00, and costs of \$302.00. The Applicant states that she has complied with all of the court's requirements. She presently remains of probation.

Paragraph 3 (Guideline H - Drug Involvement). The Government alleges that the Applicant is ineligible for clearance because she has abused illegal substances.

That information set forth above regarding Applicant's use and possession of methamphetamine.

The Applicant admits to using methamphetamine from 1996 until February 10, 1998. Since February 11, 1998, the Applicant has been subject to random drug testing and has never come up positive.

Mitigation.

Five witnesses testified on behalf of the Applicant, including her husband, father in law, project manager, crew chief and a coworker. Each of these individuals considers the Applicant to be extremely reliable, trustworthy and responsible.

Several letters of recommendation from coworkers and friends indicate that the Applicant is a model employee, an asset to the organization and a responsible person. (*See*, Applicant's Exhibit C and E).

A letter from the Applicant's attorney indicates that state law protects the Applicant from any law suit for collection from any of the creditors listed in the SOR, based upon the statute of limitations. (*See*, Applicant's Exhibit D).

A letter from the Applicant's drug counselor indicates that she enrolled in the drug court substance abuse program from February 1998 through January 1999. During that time she attended three group sessions weekly as well as three weekly meetings of either Narcotics Anonymous or Alcoholics Anonymous. The Applicant was also required to report weekly to the court as to her status in the program. She completed the program on January 28, 1999. (*See*, Applicant's Exhibit B)

A letter from the Applicant's pastor indicates that the Applicant has received counseling and has diligently worked to correct her shortcomings. He has seen her mature and grow in her faith and she has proven herself to be a loving wife, a committed mother and a responsible worker and citizen. (*See*, Applicant's Exhibit A).

POLICIES

Enclosure 2 and Section E.2.2. 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 J (Criminal Conduct)

Conditions that could raise a security concern:

1. Allegations or admissions of 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.

Guideline H (Drug Involvement)

Conditions that could raise a security concern:

1. any drug abuse;
2. illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution.

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 instances of financial irresponsibility, criminal conduct and dishonesty that 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 a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has been financially irresponsible (Guideline F); that she engaged in criminal conduct (Guideline J); and she used methamphetamine from August 1996 until at least February 1998 (Guideline H). 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 under any of the three guidelines.

The record shows that although the Applicant has good intentions to pay off all of her debts, they are still owing, and have not been paid. Furthermore, she has not demonstrated a good faith effort to get them paid. Accordingly, Guideline F (Financial Considerations) is found against the Applicant.

The Applicant's use of methamphetamine from August 1996 to February 1998, and her arrest and conviction of a felony in 1996-1997 for methamphetamine use and possession for sale show poor judgment and unreliability. Despite completing her substance abuse counseling program, and the fact that she has not used methamphetamine for almost four years, it is still too early in her rehabilitation, given the extent of her involvement, to find her eligible for access to classified information. Admittedly, the Applicant has worked hard to improve her lifestyle since serving her jail sentence, but, there is no long track record of good judgment, reliability and trustworthiness that demonstrates her eligibility. At the present time, it is not clearly consistent with the national interest to grant her a security clearance. Accordingly, Guidelines J (Criminal Conduct) and H (Drug Involvement) are 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 Paragraphs 1, 2 and 3 of the SOR.

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.: For the Applicant.

Subpara. 1.e.: Against the Applicant.

Subpara. 1.f.: Against the Applicant.

Subpara. 1.h.: Against the Applicant.

Subpara. 1.i.: For the Applicant.

Subpara. 1.j.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subpara. 3.a.: Against 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