

DATE: March 24, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-13171

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant is approximately \$150,000 in debt. The majority of the debt is connected with a serious heart problem he contracted in 1997. The Applicant ignored this situation for four years, with knowledge of the Government's interest. He filed for a Chapter 7 bankruptcy after the issuance of the SOR. This filing is insufficient to show that the Applicant has initiated a good-faith effort to resolve his indebtedness. Adverse inference is not overcome. Clearance is denied.

STATEMENT OF THE CASE

On July 15, 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 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 August 18, 2003, and requested a hearing. The case was received by the undersigned on September 22, 2003, and a Notice of Hearing was issued on September 24, 2003.

A hearing was held on October 14, 2003, at which the Government presented 10 documentary exhibits. Testimony was taken from the Applicant, who also submitted five exhibits. The transcript was received on October 27, 2003.

FINDINGS OF FACT

The Applicant is 51, single and has a high school diploma. He is employed by a defense contractor as a network design engineer, and he seeks to obtain a Secret-level DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the 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. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline F - Financial Considerations). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he is financially overextended and at risk of having to engage in illegal acts to generate funds.

The Applicant has worked in the defense industry during two distinct periods. The first was from 1985 to 1990. The Applicant returned to work with the same contractor in 1998 and continues to work with this contractor.

The Applicant has been in and out of financial difficulties for the last 24 years. In 1980, the Applicant got divorced and entered into a long period of conflict with his ex-wife concerning the custody and support of his daughters. His financial situation deteriorated and the end result was that the Applicant filed for Chapter 7 bankruptcy in 1985, being discharged in January 1986.

During the next ten years the Applicant worked to reestablish his credit. By 1996, his credit had been restored. The next year, the Applicant suffered a heart attack which resulted in several hospitalizations over the following year. By the time the Applicant returned to the defense industry in 1998, he had accumulated a large number of debts connected directly to his medical conditions. The amount of his indebtedness, both medical and non-medical, was over \$150,000.

In addition to the tax debts listed in the Statement of Reasons the bankruptcy petition showed that the Applicant had accrued additional debts to the Federal and state taxing authorities. The Applicant testified that he has been working on payment arrangements with both of these taxing authorities. The bankruptcy schedules indicate that the Applicant at one time owed over \$24,000 to these authorities. (Government Exhibit 2 at 2, Government Exhibit 4 and Transcript at 44-46.) He submitted no evidence showing what his current indebtedness is to them or that he had reached a payment arrangement with them.

When interviewed by the Defense Security Service in March 1999 the Applicant stated, "I have retained a local attorney for the purposes of filing bankruptcy. I have absolutely no alternative. This will include all debt items with the exception of my current loans, which I will continue to manage responsibly." (Government Exhibit 9 at 2.)

The Applicant was interviewed again in November 2000. He stated at this time, "I have not yet filed bankruptcy as previously planned. I will pay my attorney the remaining amount due which will allow her to file my bankruptcy in the court by Jan 01." (Government Exhibit 2 at 2.)

The Applicant finally filed for Chapter 7 bankruptcy protection on July 30, 2003. (Applicant's Exhibit B.) This was four years after his initial interview where he stated he would file bankruptcy. In the intervening time the Applicant made no payments on any of his past-due indebtedness, no matter how small. The total amount of his unsecured debt in the bankruptcy is over \$108,000. The Applicant paid his lawyer a total of \$650 to prepare and file the bankruptcy. (Applicant's Exhibit B at 32.) As of the date the record closed, the Applicant had not received a discharge in bankruptcy.

The Applicant stated that he did not file for bankruptcy earlier because he felt threatened by the DoD investigators and also did not want to give in to their demands that he file bankruptcy. The Applicant further stated that he did not make any payments on his debts because he was concerned with living day to day and that he was uncertain every morning about whether he would live through the day because of his health condition. (Transcript at 59-61, 85-88.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. 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:

- (3) the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation);

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 factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- 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 guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

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 a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of financial irresponsibility that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a 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

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 granting 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 by substantial evidence that the Applicant has a considerable number of debts that he has not, or will not, handle appropriately.

The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him. It is true that the majority of the Applicant's debts are related to his heart attack in 1997. While it can be a mitigating factor when indebtedness is related to a serious medical condition, there must be some attempt on an applicant's part to resolve the indebtedness in a timely manner. The Applicant in this case has known for over four years of the Government's concern over his severe indebtedness. His response for those four years was to act like the aggrieved party because the Government wanted him to resolve his debts and do nothing until after the SOR was issued.

One can sympathize with the Applicant, who was faced with a life threatening condition while still young. However, the measure here is not sympathy, but whether the Applicant's case shows that he has, in the words of Mitigating Condition 6, "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." An eleventh hour bankruptcy filing, after four years of indifference, is not a good-faith effort. Disqualifying Conditions 1 and 3 apply and outweigh Mitigating Condition 3. Paragraph 1 is found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the conclusionary allegations expressed in Paragraph 1 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.

Subparagraphs 1.a. through 1.p.: 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.

Wilford H. Ross

Administrative Judge