

DATE: December 12, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-13867

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has a considerable number of debts which she cannot, or will not, properly resolve. She has also falsified a questionnaire concerning the extent of her debts. Adverse inference is not overcome. Clearance is denied.

STATEMENT OF THE CASE

On February 25, 2002, 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 March 8, 2002, and requested a hearing. The case was received by the undersigned on May 2, 2002, and a Notice of Hearing was issued on May 16, 2002.

A hearing was held on June 13, 2002, at which the Government presented four documentary exhibits, and called one witness. Testimony was taken from the Applicant, who also submitted three exhibits. The transcript was received on June 21, 2002.

FINDINGS OF FACT

The Applicant is 40, single and has a Bachelor's degree in Journalism. She is employed by a defense contractor as a technical writer, and she seeks to obtain a DoD security clearance in connection with her 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 she is financially overextended.

1.a. This allegation concerns a \$301 debt for an apartment security deposit. The Applicant does not believe she should owe this money. The debt has not been paid and the Applicant has no present intention of paying it. (Transcript at 19-21.)

1.b. This allegation concerns a bank credit card debt for \$561. A credit report of the Applicant dated March 1, 2002, shows that the Applicant has two credit card accounts with this particular bank. (Applicant's Exhibit A.) One account is current and the second shows as a bad debt. The Applicant is uncertain, but she believes that this debt was paid off when she consolidated several credit cards. (Transcript at 21-22.)

1.c. The Applicant admits owing this credit card debt of \$6,642. No payments have been made on this debt. (Transcript at 23.)

1.d. This subparagraph concerns a department store credit card debt in the amount of \$1,518. No payments have been made on this debt. (Transcript at 24.)

1.e. The Applicant admits owing this credit card debt in the amount of \$9,289. No payments have been made on this debt. (Transcript at 24.)

1.f. This allegation concerns a debt to a dentist for \$172. The Applicant refuses to pay this debt because she alleges the dentist performed substandard work. (Transcript at 24-25.)

1.g. The Applicant admits owing this \$99 debt to a medical group. She testified that she has tried to contact the medical group to arrange payment but can never talk to a competent person. No payments have been made on this debt. (Transcript at 25.)

1.h. The Applicant makes enough money to cover her current expenses and have approximately \$450-500 left over every month.

The Applicant stated at the hearing that she felt she had resolved this situation because the majority of the debts listed on the SOR were no longer on her credit report dated February 28, 2002. (Applicant's Exhibit B, Transcript at 38-39.) The Applicant's credit report dated March 1, 2002, showed the creditors in subparagraphs 1.b. and 1.g., as well as two additional creditors. (Applicant's Exhibit A.)

The Applicant testified that she felt her first responsibility was to her son and that attempting to pay off the large debts would affect her ability to do that. The Applicant also stated that her ex-boyfriend helped run up these debts and then ran out on her.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has made false statements during the clearance screening process.

On April 25, 2000, the Applicant completed an official DoD questionnaire in which she stated that she had one account which had been over 180 days delinquent in the last seven years. (Government Exhibit 1, Question 38.) In the same application, the Applicant also stated that she was currently 90 days delinquent on only one account. (Government Exhibit 1, Question 39.) These were false answers to relevant questions concerning the Applicant's debt situation.

The Applicant gave several conflicting reasons for answering the questions that way. She first maintained that she did not have a copy of her credit report with her, and gave information on the debts she knew about. The Applicant next stated that she felt several of the debts had been removed from her credit report and, therefore, she did not have to report them. (Transcript at 40-43.) The Applicant then testified that in filling out questionnaires for other jobs, "[Every] time

I've filled something out, it hasn't been, you know, exact details. I thought as long as I brought it up, yes, the fact that I do have debts, that that was sufficient." (Transcript at 44.) Finally, she stated that she felt it would be worse to put something on the forms that was wrong. (Transcript at 45.)

The Applicant was subsequently interviewed by a Special Agent of the Defense Security Service (DSS) in October 2000. In a sworn statement (Government Exhibit 2 at 1), the Applicant stated that she "believed" three creditor accounts on her credit report (Government Exhibit 4) were actually one account. In actuality only two of the accounts were the same account. On page 3 of the sworn statement she says, "There are no current problems with my credit." (Government Exhibit 2 at 3.) Records indicate that the Applicant is able to maintain payments on her current debt. (Applicant's Exhibits A and B.) In my opinion, the statements by the Applicant referred to her ability to her current debt situation and not her past due bills. Subparagraph 2.b. is found for the Applicant.

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 criterion. 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;

Conditions that could mitigate security concerns:

(None of the stated conditions have application in this case.)

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;

Conditions that could mitigate security concerns:

(None of the stated conditions have application in this case.)

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 criteria 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 have debt problems or be involved in acts of falsification 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 debt problems (Guideline F); and that she made false material statements to DoD (Guideline E).

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 her, except in part. Regarding Paragraph 2 (Guideline E): Subparagraph 2.b. is found for the Applicant as I have determined that there was no willful falsification as alleged in this subparagraph.

The Applicant has a serious and long-standing debt problem which she either cannot, or will not, resolve. She has not made a good faith effort to resolve her debts, and her reliance on the debts "dropping off" of her credit report is misplaced. She has excess money every month, but has not even taken the time to resolve the smallest of the alleged debts, one for \$99. Her desire to do the best for her child is laudatory, but her actions, or lack thereof, do not demonstrate the good judgment required of clearance holders. Paragraph 1 and its subparagraphs are found against the Applicant.

The Government relies heavily upon the integrity and honesty of clearance holders, and it is a negative factor for security clearance purposes where an Applicant has deliberately provided false information about material aspects of his or her personal background. I have closely examined the various reasons the Applicant gave for not giving the Government a fuller accounting of her debt situation in 2000 and find them wanting. It is obvious that the Applicant knew, or should have known, that her answers were seriously incomplete. There is a point where incompleteness becomes falsification. That point has been reached here. Subparagraph 2.a. and Paragraph 2 are found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing her request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the 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.

Subparagraph 1.a.: Against the Applicant.

Subparagraph 1.b.: Against the Applicant.

Subparagraph 1.c.: Against the Applicant.

Subparagraph 1.d.: Against the Applicant.

Subparagraph 1.e.: Against the Applicant.

Subparagraph 1.f.: Against the Applicant.

Subparagraph 1.g.: Against the Applicant.

Subparagraph 1.h.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subparagraph 2.a.: Against the Applicant.

Subparagraph 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.

Wilford H. Ross

Administrative Judge