

DATE: August 30, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-14701

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Melvin H. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's excessive indebtedness has been mitigated. His deliberate falsifications on two security clearance applications concerning his arrest history and illegal drug use has not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On February 12, 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, 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 1, 2002, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on July 8, 2002. A notice of hearing was issued on July 15, 2002. The hearing was held on August 2, 2002, at which the Government presented thirteen exhibits. The Applicant presented six exhibits. The Applicant testified on his own behalf. The official transcript (Tr.) was received on August 12, 2002.

FINDINGS OF FACT

The Applicant is 34 years old, and has a high school diploma. He is employed by a defense contractor as a truck driver, and is seeking to retain his Secret security clearance in connection with his 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 he is financially overextended and at risk to engage in illegal acts to generate funds.

The Applicant filed for Chapter 7 Bankruptcy on August 24, 2000. (See, Applicant's Exhibit F). Each of the debts listed in the Statement of Reasons were discharged on November 29, 2000.

Subparagraph 1(a) The Government alleges that the Applicant was indebted to a creditor in the amount of approximately \$2,922.00 for an account delinquent since August 26, 1999. The Applicant stated that he is uncertain as to the specific amount he owed to the creditor. However, the debt was discharged in his Chapter 7 Bankruptcy on November 29, 2000. (Applicant's Exhibit F).

Subparagraph 1(b) The Applicant admits that he was indebted to a hospital in the amount of \$122.00 for an account delinquent since August 26, 1999. However, the debt was discharged in his Chapter 7 Bankruptcy on November 29, 2000. (Applicant's Exhibit F).

Subparagraph 1(c) The Applicant admits that he was indebted to a hospital in the amount of approximately \$162.00 for an account delinquent since August 26, 1999. However, the debt was discharged in his Chapter 7 Bankruptcy on November 29, 2000. (Applicant's Exhibit F).

Subparagraph 1(d) The Applicant admits that he was indebted to a hospital in the amount of approximately \$135.00 for an account delinquent since August 26, 1999. However, the debt was discharged in his Chapter 7 Bankruptcy on November 29, 2000. (Applicant's Exhibit F).

Subparagraph 1(e) The Applicant admits that he was indebted to a hospital in the amount of \$397.00 for an account delinquent since August 26, 1999. However, the debt was discharged in his Chapter 7 Bankruptcy on November 29, 2000. (Applicant's Exhibit F).

Subparagraph 1(f) The Government alleges that on October 13, 1993, a civil judgment was entered against the Applicant in the amount of approximately \$1,000.00. The Applicant states that he has no knowledge of this judgment, but contends that it was discharged in his Chapter 7 Bankruptcy on November 29, 2000. (Applicant's Exhibit F).

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

The Applicant completed a National Agency Questionnaire (DD form 398-2) dated March 7, 1995. In response to question 18, which asked, "Have you ever been arrested, charged, cited, held, or detained by Federal, State, or other law enforcement or juvenile authorities regardless of whether the charge was dropped or dismissed or you were found guilty?" the Applicant listed his arrest in 1991 for Driving Under the Influence of Alcohol. He failed to disclose his arrest in January 1991, for Public Intoxication, Disturbing the Peace and Resisting Arrest; in June 1991 for Public Intoxication; in January 1994 for Buy/Sell Articles with ID removed, Impact Wrench; and in February 1994, for Use/Under Influence of Controlled Substance. (See Government Exhibit 2, Question 18). The Applicant stated that to his knowledge he did not complete an "SF 86" on March 7, 1995. Question 18, on the security clearance application he had refers to "Selective Service Record." (See, Government Exhibit 3). After being provided a copy of his National Agency Questionnaire he still did not remember it, but acknowledged that his signature appears to be on the document.

The Applicant completed a Security Clearance Application (Standard Form 86) dated June 30, 1999. In response to question 24, which asked, "Have you ever been charged with or convicted of any offenses related to alcohol or drugs?" the Applicant listed his arrest in 1991 for Driving Under the Influence. He failed to disclose his arrest in January 1991, for Public Intoxication, Disturbing the Peace and Resisting Arrest; in June 1991, for Public Intoxication; and in February 1994, for Use/Under Influence of Controlled Substance. (See Government Exhibit 3, Question 24)

The same questionnaire, in question 26, asked, "In the last seven years, have you been arrested for, charged with, or convicted of any offenses(s) not listed in modules 21, 22, 23, 24 or 25." The Applicant answered "NO" to this question. This was a false response. The Applicant failed to list his arrest in January 1994 for Buy/Sell Articles with ID removed, Impact Wrench. (See, Government Exhibit 3, Question 26).

The same application in response to question 27, asked, "Since the age of 16 or in the last 7 years, which ever is shorter, have you illegally used a controlled substance or prescription drugs?" The Applicant answered "NO" to this question. This was a false response. The Applicant failed to disclose his use of speed from 1993 to February 1994. The Applicant stated that he did not know the dates that he used speed. (See, Government Exhibit 3, Question 27).

There was some initial confusion in the record with respect to whether the Applicant intentionally falsified his security questionnaires concerning his arrest history and illegal drug use. The Applicant first testified that he denied the allegations in answering the Statement of Reasons, because he did not have Government Exhibit 2, but thought questions were being asked about Government Exhibit 3. (See, Tr. p. 42 and Applicant's Response to SOR). (It is also noted, that each allegation set forth under Guideline E, paragraph 2, of the Statement of Reasons was erroneously alleged in some fashion. Either the title of the document was alleged wrong, or the date of the incident was alleged wrong. The Government moved to amend these allegations at the hearing to comply with the evidence presented. Even so, this does not explain why the Applicant did not answer the questions on his security clearance applications truthfully in the first place).

The Applicant further testified that at the time he filled out his security clearance application in 1999, he had forgotten specific dates and times and was not sure how far to go back in answering some of the questions. He states that he honestly thought that he had resolved the matter when he was able to clarify these details during his interview with the Defense Security Service (DSS). The Applicant stated that at no time did he deliberately attempt to conceal his arrests or his past illegal drug use, he simply did not remember dates and times until his interview with DSS.

The Government concedes that when the Applicant met with the DSS, he voluntarily provided all of the information concerning his arrests and drug use in detail. (Applicant's Exhibit E).

Letters of recommendation from the Applicant's Lead, a coworker, his apartment manager and the man that hired him, indicate that the Applicant is reliable, trustworthy, dedicated to his job and an asset to his company. (See, Applicant's Exhibits A, B, C, and D).

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.

Condition that could mitigate security concerns include:

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

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 instances of financial irresponsibility and dishonesty 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 a security clearance.

In this case the Government has met its initial burden of proving that the Applicant was, in the past, financially irresponsible (Guideline F); and he intentionally falsified material facts in his security clearance application (Guideline E). 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.

With respect to his finances, the Applicant has filed bankruptcy, his debts were discharged and he has resolved his indebtedness. He and his wife are current with all of their bills and plan to stay that way. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

Even considering the fact that the Applicant was confused about the time and dates that his arrests and drug use occurred, he knew that he had been arrested and that he has used speed and he should have revealed those matters in response to the questions on his security clearance applications.

With the particular evidence that I have been provided, I do not find his excuses credible or believable. I have been provided no reasonable excuse for the Applicant to have failed to reveal his arrest history and illegal drug involvement. Consequently, the evidence proves that the Applicant has not been completely honest with the Government regarding his arrest history and illegal drug involvement. I find that the Applicant deliberately failed to reveal this information to the Government.

The Government relies heavily upon the integrity and honesty of clearance holders. It is a negative factor for security clearance purposes when an Applicant has deliberately provided false information about material aspects of his personal background. This Applicant has not demonstrated that he is trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline E (Personal Conduct).

The Applicant has not provided this Administrative Judge with sufficient evidence in mitigation that would negate the negative impact his falsifications have on his security worthiness. At this time, I cannot find that it is clearly consistent with the national interests to grant the Applicant a security clearance.

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 2 of the Government's Statement of Reasons. As stated above, Paragraph 1 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: For the Applicant.

Subpara. 1.a.: For the Applicant.

Subpara. 1.b.: For the Applicant.

Subpara. 1.c.: For the Applicant.

Subpara. 1.d.: For the Applicant.

Subpara. 1.e.: For the Applicant.

Subpara. 1.f.: For the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

Subpara. 2.c.: Against the Applicant.

Subpara. 2.d.: 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