

DATE: February 12, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-15230

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's excessive indebtedness, caused by several job lay-offs and poor financial management, has not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On July 10, 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, as amended, 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 his clearance should be denied or revoked.

The Applicant responded to the SOR in writing on August 21, 2002, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on October 28, 2002. A notice of hearing was issued on November 18, 2002, scheduling the hearing for December 17, 2002. At the hearing the Government presented seven exhibits. The Applicant presented five exhibits. The Applicant also testified on her own behalf. The official transcript (Tr.) was received on December 27, 2002.

FINDINGS OF FACT

The Applicant is 55 years old. He is a Lead Quality Assurance Engineer, and is applying for a Secret level security clearance in connection with her 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 explained that his financial problems began in 1992 with the aerospace industry cutbacks when he was first laid off from his job. He then tried to start his own consulting business but was unable to generate any meaningful income. When he finally secured a position, the income was about half of what he was making with his previous employer. He worked for about two years before he was laid off again. In May 1995, the Applicant inherited approximately \$100,000.00 from a relative. He states that he used this money to live on. He finally secured a full time job with his present employer in May 1998. Since then he states that he has been trying to get his finances back in order.

In 1997, he met a woman with two children, and they were married in 1997. The cost of putting the children in private school, buying a new town house and trying to keep the old house for rental property caused him even more financial problems than he expected.

As a direct result of the defense industry downturn and the Applicant's poor money management decisions, he acquired many delinquent debts, totaling in excess of \$24,000.00. The Applicant admits to all of the delinquent debts referred to in the SOR except allegations, 1.b., 1.p., and 1.r. (*See, Applicant's Answer to SOR*). The following debts set forth in the SOR remain outstanding:

Subparagraphs 1.a., 1.d., 1.e., 1.g., 1.i., 1.j., 1.l., 1.m., 1.n., 1.q., and 1.s., are unsatisfied delinquent debts totaling a combined amount in excess of \$20,000.00. (*See, Tr. pp. 45-64*). The debts consist primarily of credit card debt, telephone bills, medical bills, and other miscellaneous bills.

The Applicant claims that he has paid off the debts alleged in subparagraphs 1.b., 1.c., 1.f., 1.h., 1.k and 1.o. There is no evidence to corroborate this testimony except in regard to subparagraph 1.k. (*See, Applicant's Exhibit D*).

The Applicant's personal financial statement dated April 30, 2002, indicates that his monthly net remainder is approximately \$217.84. (*See, Applicant's Answer to SOR*). The Applicant states that he is currently using all available monies to pay off his past due indebtedness and he has incurred no new debt. The Applicant has prepared a spread sheet of his bills. (*See, Applicant's Exhibit C*).

The Applicant has received a five year Certificate of Appreciation and several other awards from his present employer for his dedicated service. (*See, Applicant's Exhibits A and B*).

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:

3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business turndown, 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 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 financial irresponsibility 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 or her a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has excessive indebtedness (Guideline F). 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.

Admittedly, in 1992, and again in 1995, the Applicant was effected by job lay-offs that negatively impacted his financial situation. These unforeseen unfortunate circumstances coupled with poor money management decisions, resulted in him

accumulating excessive debts.

A business downturn is a condition that could under some circumstances mitigate security concerns as to why he accumulated the debt. Now the question is, what has he done about the debt? In this case, the Applicant remains under extreme financial duress. Even though he inherited a substantial amount of money in 1995, it has made no positive impact on his financial situation. He continues to owe past due debts well in excess of \$20,000.00. He has indicated that he and his wife have literally cut back to the bone, and are prepared to use his disposable income to pay off his debts. He has prepared a spread sheet of his bills, however, there is no real plan or method he has established to accomplish the task of paying his past debts. The Applicant has made little or no effort to pay his past due debts. The fact that the Applicant remains delinquent as to each of the creditors listed in the SOR, except those that he claims to have paid and those he denies, demonstrates no real evidence of financial rehabilitation.

The Applicant has a long road ahead to reduce his indebtedness. Given this uncertainty and the size of his outstanding indebtedness, the risk is too great that he could engage in illegal acts that could jeopardize the national security. There is no evidence in mitigation that would negate the negative impact his financial situation has on his security worthiness. At this time, I cannot find that it is clearly consistent with the national interest to grant the Applicant a security clearance. Accordingly, Guideline F, Financial Considerations, is found against the Applicant.

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 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.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: For the Applicant.

Subpara. 1.c.: For the Applicant.

Subpara. 1.d.: Against the Applicant.

Subpara. 1.e.: Against the Applicant.

Subpara. 1.f.: For the Applicant.

Subpara. 1.g.: Against the Applicant.

Subpara. 1.h.: For the Applicant.

Subpara. 1.i.: Against the Applicant.

Subpara. 1.j.: Against the Applicant.

Subpara. 1.k.: For the Applicant.

Subpara. 1.l.: Against the Applicant.

Subpara. 1.m.: Against the Applicant.

Subpara. 1.n.: Against the Applicant.

Subpara. 1.o.: For the Applicant.

Subpara. 1.p.: For the Applicant.

Subpara. 1.q.: Against the Applicant.

Subpara. 1.r.: Against the Applicant.

Subpara. 1.s.: 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