

DATE: May 26, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-18209

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Edward W. Loughren, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's history of financial indebtedness has not been mitigated by a good faith effort to repay his creditors or otherwise resolve his financial indebtedness. Clearance is denied.

STATEMENT OF THE CASE

On July 18, 2003, 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 clearance should be denied or revoked.

The Applicant responded to the SOR in writing on August 11, 2003, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 15, 2004. A notice of hearing was issued on January 22, 2004, scheduling the hearing for February 25, 2004. At the hearing the Government presented eleven exhibits. The Applicant presented seven exhibits and testified on his own behalf. The record was left open to allow the Applicant an opportunity to submit additional evidence. The Applicant submitted one Post-Hearing Exhibit consisting of five pages. The official transcript (Tr.) was received on March 11, 2004.

FINDINGS OF FACT

The Applicant is 40 years old, married and holds a Bachelors of Science Degree in Computer Science. He is employed as a Database Programmer by a defense contractor and is applying for a security clearance in connection with his 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:

The Applicant admits each of the allegations set forth in the SOR, except allegations 1(c) and 1(j). (*See Applicant's Response to SOR dated August 11, 2003*).

The Applicant was married in 1995. His wife has a serious back and seizure disorder that has required numerous surgeries and constant medical attention. As a result, he has incurred many expensive medical and hospital bills related to her condition. She presently receives medicaid and state disability. The Applicant has a different medical insurance carrier than his wife. The Applicant explained that most of the debts listed in the SOR are medical bills that either his or his wife's insurance carrier should be responsible to pay. The Applicant attributes the delinquent medical bills to the fact that the insurance carrier has failed to follow the procedures in order to have the bills paid and that they remain outstanding. The Applicant has not, however, disputed the bills.

In his sworn statement to the Defense Investigative Service dated September 22, 1999, the Applicant stated regarding his outstanding debts that the insurance companies have either refused to pay or have paid all that they are willing to pay. The Applicant further indicated that he would be making payment arrangements even though he believed that the insurance carriers should pay the debts. (*See Government Exhibit 3*).

The Government's evidence, namely the Applicant's credit reports, support each of the allegations in the SOR. (*See Government Exhibits 2, 5, 6, 7, 8, and 9*). The following debts remain outstanding and owing by the Applicant:

The Applicant is indebted to a creditor in the approximate amount totaling \$79.00. Applicant's credit report indicates that as of August 2002, the debt had not been paid. (*See Government Exhibits 2, 5, 6, 7, 8, 9, and 10*). This debt is related to his wife's health condition.

The Applicant is indebted to a physician in the approximate amount of \$231.00. Applicant's credit report indicates that as of August 2002, this debt had not been paid. (*See Government Exhibits 2, 5, 6, 7, 8, 9, and 10*). This debt is related to his wife's health condition.

The Applicant is indebted to a bank for a credit card in the approximate amount of \$3,546.00. Applicant's credit report indicates that as of August 2002, this debt had not been paid. (*See Government Exhibits 2, 5, 6, 7, 8, 9, and 10*). The Applicant had paid this debt in full. (*See, Tr. p. 37 and Applicant's Exhibit F*).

The Applicant is indebted to a department store in the approximate amount of \$482.00. The Applicant's contends that this debt is resolved as it no longer appears on his most recent credit report.

The Applicant is indebted to a hospital for in the amount totaling approximately \$508.00. Applicant's credit report indicates that as of August 2002, this debt had not been paid. (*See Government Exhibits 2, 5, 6, 7, 8, 9, and 10*). This debt is related to his wife's health condition.

The Applicant is indebted to a hospital in the approximate amount totaling \$1,994.00. Applicant's credit report indicates that as of August 2002, this debt had not been paid. (*See Government Exhibits 2, 5, 6, 7, 8, 9 and 10*). This debt is related to his wife's health condition.

The Applicant is indebted to a physician in the approximate amount of \$715.00. Applicant's credit report indicates that as of August 2002, this debt had not been paid. (*See Government Exhibits 2, 5, 6, 7, 8, 9, and 10*). This debt is related to his wife's health condition.

The Applicant is indebted to a hospital in the approximate amount of \$637.00. Applicant's credit report indicates that as of August 2002, this debt had not been paid. (*See Government Exhibits 2, 5, 6, 7, 8, 9, and 10*). This debt is related to his wife's health condition.

The Applicant was indebted to a hospital in the approximate amount of \$200.00. Applicant's credit report indicates that as of July 1, 2003, this debt had not been paid. (*See Government Exhibits 2, 5, 6, 7, 8, 9, and 10*). This debt was related to the Applicant's surgery he required as a result of a car accident. He believes that the debt was paid by his attorney.

The Applicant is indebted to an apartment complex in the approximate amount of \$771.00. Applicant's credit report indicates that as of August 2002, this debt had not been paid. (See Government Exhibits 2, 5, 6, 7, 8, 9, and 10). The Applicant denies the debt, as he believes that the debt has been satisfied because he received his deposit and his security check back from the creditor.

The Applicant admits that his personal financial statement dated September 22, 1999, indicates a net remainder of approximately \$400.00 after expenses; however he contends that it does not reflect a true depiction unexpected expenses that occur. For example, the Applicant notes that his telephone bill and his wife's medication bills fluctuate from month to month. The Applicant indicates that although he is living within his means, his finances are very tight. (See Government Exhibit 2).

Applicant's Post-hearing Exhibit, dated March 1, 2004, indicates that he has recently contacted several of the creditors listed in the SOR in order to resolve the debts in some fashion. (See Applicant's Post-Hearing Exhibit).

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:

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 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 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 her a security clearance.

In this case the Government has met its initial burden of proving that the Applicant was financially irresponsible (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.

With respect to his finances, the Applicant has a history of excessive indebtedness and has made little effort, if any, to pay off his outstanding debts or to further resolve his financial situation. His financial statement indicates that he is capable of paying his past due debts, some of which are not large, but for some reason he has chosen not to pay them. The evidence is mixed as to whether the Applicant believes he owes his delinquent debts, or whether he is simply waiting for the insurance carrier to pay them. Whatever the case, the Applicant has done nothing until recently, to inquire as to their status. It is the Applicant's responsibility to pay his outstanding debts or otherwise get them resolved. The Applicant has done neither. Disqualifying conditions (DC)1, a history of not meeting financial obligations; and (DC) 3, an inability or unwillingness to satisfy debts apply and have not been mitigated. The Applicant's financial problems remain current; (MC)1, they are not isolated, (MC) 2, and the Applicant has not initiated a good faith effort to repay his overdue creditors or otherwise resolve his debts (MC) 3. Consequently, I must find that none of the mitigation factors set forth in the Directive under Guideline F apply. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

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 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.: Against the Applicant.

Subpara. 1.c.: For the Applicant.

Subpara. 1.d.: Against the Applicant.

Subpara. 1.e.: Against the Applicant.

Subpara. 1.f.: Against the Applicant.

Subpara. 1.g.: Against the Applicant.

Subpara. 1.h.: Against the Applicant.

Subpara. 1.i.: Against the Applicant.

Subpara. 1.j.: For the Applicant.

Subpara. 1.k.: 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