

DATE: June 28, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-19992

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Arnold Neves Jr., Attorney At Law

SYNOPSIS

Applicant's excessive indebtedness caused by the defense industry downturn and his divorce have not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On January 4, 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 January 22, 2002, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on March 12, 2002 and the matter was set for April 18, 2002. On April 12, 2002, a letter from Applicant's Counsel indicated that Applicant was in the hospital and possibly unavailable for the hearing date. On April 15, 2002, Department Counsel requested a continuance based upon good cause, and with no objection from Applicant's counsel, the continuance was granted. A notice of hearing was issued on May 10, 2002, and the hearing was rescheduled for May 30, 2002. On May 22, 2002, Applicant's Counsel requested a continuance, which was denied. At the hearing the Government presented five exhibits. The Applicant presented three exhibits and testified on his own behalf. The official transcript (Tr.) was received on June 7, 2002.

FINDINGS OF FACT

The Applicant is 51 years old. He is President and 40% shareholder of his company, 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:

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 has worked for the defense industry for the past thirty-two years. In October 1984 he formed his own company, which over the years became quite successful. During the defense industry boom, prior to 1994, the Applicant earned between \$400,000.00 and \$900,000.00 dollars in gross income annually. (Tr. P. 17). His credit was straight triple A, and he was living a lavish lifestyle.

Beginning in early 1995, things drastically changed. The defense industry cutbacks began, and the Applicant took a huge cut in income and in company earnings. In 1995, the Applicant's annual income dropped to approximately \$80,000.00. In 1997, he received only between \$25,000.00 and \$30,000.00 dollars in actual income from the company. In order to pay his debts, the Applicant liquidated many of his assets, including rental property, a race car, motors, a motorcycle, and a motor home. (Tr. pp. 18-19). The Applicant states that, "Almost every month I am getting rid of something." (Tr. p. 78). From 1995 until this past year, the Applicant's company has been on a downhill slide. To stay in business the Applicant closed several of his offices and sought to expand his company into more promising and lucrative areas.

In October 1994, the Applicant and his wife separated, and in November 1999 the divorce was finalized. During the five years between their separation and their divorce, the Applicant maintained his household as well as that of his wife's without a court order. (Tr. p. 21).

The Applicant contends that the debts set forth in allegations, 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.h., 1.i., 1.j., 1.l., 1.n., 1.o., are all debts that were incurred by his former spouse. In June 1999, the Applicant's wife filed bankruptcy, in her name only, and discharged her debt in September 1999. Although the Applicant contends that the debt she discharged was hers alone, he has accepted responsibility for it. This debt totals almost \$37,000.00. The Applicant states that he would like to pay this debt. (Tr. p. 32).

As a direct result of the defense industry's economic downturn, the Applicant acquired many delinquent debts, and admits to all but one of the delinquent debts referred to in the SOR. (See Tr. pp. 52-53). The following debts remain outstanding: The Applicant is indebted to Creditor A, for a delinquent credit card account, in the approximate amount of \$1,678.00; Creditor B, for a delinquent credit card, in the approximate amount of \$7,612.00; Creditor C, to a city, in the approximate amount of \$982.00; Creditor D, a cable company, in the approximate amount of \$36.00; Creditor E, for a delinquent credit card account in the approximate amount of \$7,905.00; Creditor F, for a delinquent debt in the approximate amount of \$ 2,815.00; Creditor G, an attorney, in the approximate amount of \$34,000.00; Creditor I, a telephone company, in the approximate amount of \$237.00; Creditor J, a delinquent credit card account, in the approximate amount of \$13,186.00; Creditor K, for a delinquent doctor bill, in the approximate amount of \$660.00; Creditor L, for a delinquent hospital bill in the approximate amount of \$284.00; Creditor M, an attorney in the approximate amount of \$3,800.00; Creditor N, for a delinquent debt in the approximate amount of \$81.00; and Creditor O, a bank in the amount of approximately \$1,827.00.

Creditor P, Q and R, refer to delinquent State A taxes in the amount of approximately \$89,172.98. The Applicant has reduced this debt to approximately \$70,000.00. Creditor S and T are delinquent federal taxes in the approximate amount of \$212,329.73 that are still outstanding. The Applicant contends that the original debt was \$330,000.00 and he been paying it down. Creditor U, delinquent State B taxes in the approximate amount of \$1,589.74 are also still owing.

The Applicant states that he paid off Creditor H, a delinquent hospital bill in the approximate amount of \$230.00. The Applicant's personal financial statement dated December 11, 2000, indicates that he has a monthly net remainder of \$619.00, after his monthly expenses. (See, Government Exhibit 2). The Applicant contends that he has been working hard to pay down some of his debt, concentrating on his taxes first.

The Applicant has decided that he does not want to file bankruptcy, but hopes to rebuild his business and pay off these outstanding debts. (Tr. pp. 24-25). Business revenues have doubled since last year, increasing from a half million dollars

to a little over a million. However, the Applicant's annual income has not significantly increased. (Tr. p. 23). His gross salary is currently approximately \$100,000.00 a year. (Tr. p. 68).

Mitigation.

The Applicant submitted a number of letters of appreciation from the Department of the Navy attesting to the outstanding work and quality craftsmanship over and above the call of duty provided by the Applicant's company. (See Applicant's Exhibit A).

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, since early 1995, the Applicant has experienced a rough period with his business, significantly impacted by the defense cutbacks, not caused by any fault of his own. During much this period he was also going through a costly divorce. These unforeseen unfortunate circumstances resulted in him accumulating enormous debt. A business downturn and a divorce are conditions 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. The Applicant states that he has chosen not to file bankruptcy, but to pay off this debt. It is unclear how he is going to do this. There is no plan or method he has established to accomplish this task. The fact is that the Applicant remains delinquent as to each of the creditors listed in the SOR, except allegation 1.h. The Applicant has not initiated a good faith effort to repay or otherwise resolve these debts. His stated intention to pay his creditors is good, however, he has not shown a systematic pattern of payment towards reaching this goal. The total amount owed remains well in excess of \$300,000.00.

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.: Against the Applicant.

Subpara. 1.c.: Against 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.: For the Applicant.

Subpara. 1.i.: Against the Applicant.

Subpara. 1.j.: Against the Applicant.

Subpara. 1.k.: Against the Applicant.

Subpara. 1.l.: Against the Applicant.

Subpara. 1.m.: Against the Applicant.

Subpara. 1.n.: Against the Applicant.

Subpara. 1.o.: Against the Applicant.

Subpara. 1.p.: Against the Applicant.

Subpara. 1.q.: Against the Applicant.

Subpara. 1.r.: Against the Applicant.

Subpara. 1.s.: Against the Applicant.

Subpara. 1.t.: Against the Applicant.

Subpara. 1.u.: Against the Applicant.

Subpara. 1.v.: 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