

DATE: November 4, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-21274

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant owes almost \$90,000 in overdue student loans and child support. These debts are non-dischargeable. The Applicant does not have a long enough history of steady payments to show that he can pay these debts off in a reasonable time. He also falsified an official questionnaire concerning his police record involving alcohol. Adverse inference is not overcome. Clearance is denied.

STATEMENT OF THE CASE

On January 10, 2003, 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 February 12, 2003, and requested a hearing. The case was received by the undersigned on May 28, 2003, and a Notice of Hearing was issued on June 3, 2003.

A hearing was held on June 26, 2003, at which the Government presented 10 documentary exhibits. Testimony was taken from the Applicant, who also submitted 15 hearing exhibits (Applicant's Exhibits A through O) and six post-hearing exhibits. Applicant's Exhibit P is a letter from the Applicant to the Administrative Judge dated June 26, 2003; Applicant's Exhibit Q is a General Forbearance Request sent by the Applicant on June 6, 2003, to the William D. Ford Direct Student Loan Program; Applicant's Exhibit R is a Direct Loan Verification dated June 27, 2003, from the William D. Ford Direct Student Loan Program; Applicant's Exhibit S is a photocopy of two money orders dated June 27, 2003; Applicant's Exhibit T is a Benefit Overpayment Statement of Amount Due dated June 7, 2003, from the State Employment Development Department; Applicant's Exhibit U is an Account Statement dated June 22, 2003, from the

William D. Ford Direct Student Loan Program. The transcript was received on July 11, 2003.

FINDINGS OF FACT

The Applicant is 44, single and has a Associate of Arts degree. He is employed by a defense contractor as a Tube Bender, Senior, and he seeks to obtain a Secret-level DoD security clearance in connection with his 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 he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds.

Subparagraph 1.a. The Applicant admits owing this credit card company approximately \$2,173.00. At one point the Applicant made an arrangement with this creditor to pay off the debt for a lesser amount (Applicant's Exhibit K at 1). He was unable to fulfill the agreement, however. The Applicant has paid \$300.00 towards this account since 1999. His intent is to pay them \$100.00 a month until he pays off the debt. (Transcript at 37, 62-63; Applicant's Exhibit K at 2-4 and Applicant's Exhibit S.)

Subparagraph 1.b. The Applicant paid this debt off in February 2003. This allegation is found for the Applicant.

Subparagraph 1.c. A civil claim in the amount of \$200.00 has been satisfied. This allegation is found for the Applicant.

Subparagraphs 1.d. and 1.e. The Applicant attended school during the 1990s using student loans. The Applicant testified that the lender lost a \$900.00 payment that the Applicant sent in. He refused to send any more money until they found his payment. By the time they did, due to employment difficulties, the rest of his loans had gone into default and he had to consolidate them. All of his loans have been consolidated under a loan from the William D. Ford Federal Direct Loan Program. (Applicant's Exhibit A.) The Applicant requested a forbearance from paying the loan. The request was approved June 22, 2003, for a period ending May 28, 2004. The Applicant currently owes \$38,379.64. Interest will continue to accrue for the year in an approximate amount of \$1,305.44. (Transcript at 41-47.) His intention is to begin paying off his educational loans after his current forbearance period ends.

Subparagraph 1.f. The Applicant pays child support for three children. He pays \$240.00 a month for current charges. In addition, as of June 1, 2003, the Applicant owed \$51,685.25 in past due child support on two court orders. The Applicant has agreed to have \$1,009.33 automatically deducted from his pay every month for current and past due child support. (Applicant's Exhibit F, Transcript at 48-51.)

In addition to the listed debts, the Applicant revealed that he owes approximately \$600.00 to his State's Employment Development Department for an unemployment benefit overpayment. He has recently paid \$75.00 towards this account. (Transcript at 74-75, Applicant's Exhibits S and T.)

The Applicant currently lives with his mother, but will be renting an apartment near his work. He is able to maintain his current debt load, including past due child support. However, his financial situation continues to be rather precarious.

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

On July 17, 2002, the Applicant completed an official DoD questionnaire in which he stated that he had never been charged or convicted for an offense related to alcohol. (Government Exhibit 1, question 24.) This statement was a false answer to a material question pertaining to the Applicant's police record.

The Applicant had been arrested in 1990 for Driving Under the Influence of Alcohol. He eventually was convicted of Reckless Driving. The Applicant maintains:

I misread that question and one reason why I misread the question was I had done a lot of background checks. I did one for [an] Airlines. I did one for [a telephone company]. A lot of companies I applied for jobs for, they do background checks. And they only go back 10 years. And I was so used to doing 10-year background checks, that I just overlooked it and I never really thought. I should have read the question more. I should have really read the question and I overlooked it and I didn't realize that they went back so far. (Transcript at 58.)

Considering all the available evidence, I believe the falsification to be intentional.

Mitigation.

The Applicant maintains that a lot of his debt problems occurred because he had several extended periods of unemployment, or underemployment, during the 90s. After being continuously employed at his defense contractor employer from 1980 to 1990, he was laid off. From 1990 until 1998 the Applicant went to school, was unemployed, or underemployed except for brief periods. He was again employed by the defense contractor from October 1998 to January 2000. He was laid off again and resumed work with his defense contractor in March 2003.

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 guideline. 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:

- (3) the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation);
- (6) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Guideline E (Personal conduct)

Conditions 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 guidelines 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 be involved in acts of falsification and have continuing financial problems 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 had financial problems for a number of years (Guideline F); and that he intentionally 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 him, except in part. Under Paragraph 1 (Guideline F), as set forth above, subparagraphs 1.b. and 1.c. are found for the Applicant as he has resolved those particular debts.

The Applicant has substantial debt problems. He has accrued over \$50,000.00 in past due child support obligations, and has \$38,000.00 in past due educational loans. The student loans are in forbearance for a year, but that merely postpones the problem, it does not solve it. Right now he is paying \$1,000.00 a month in child support, but it is questionable whether he can continue to make those payments and repay his education loans. His credit card bill, described in subparagraph 1.a., while relatively small, has been owing for several years and, at his current rate of payment, would take almost two years to pay back. Even allowing for his years of unemployment and underemployment, the Applicant has not shown that he has done all he can to resolve these situations. The fact is he has almost \$90,000.00 in non-dischargeable debt and no consistent track record of payment. Paragraph 1 is 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 considered the Applicant's testimony concerning how he made this false entry and find it wanting. Guideline E is found against the Applicant.

The Applicant's efforts at reform are noted. However, under the particular circumstances of this case, this evidence does not overcome the adverse information that has been presented by the Government.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing his 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 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.: For the Applicant.

Subparagraph 1.c.: For the Applicant.

Subparagraph 1.d.: Against the Applicant.

Subparagraph 1.e.: Against the Applicant.

Subparagraph 1.f.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subparagraph 2.a.: 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.

Wilford H. Ross

Administrative Judge

