

DATE: April 29, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-24010

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On November 9, 2001, 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 clearance should be denied or revoked.

The Applicant responded to the SOR in writing in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on January 25, 2002. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on February 26, 2002, and he submitted no reply.

The case was assigned to the undersigned for resolution on April 1, 2002.

FINDINGS OF FACT

The Applicant is 49 years old, single, and has taken some college courses. He is employed by a defense contractor as an Associate Engineer, and is seeking to retain his 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.

In 1995, the Applicant experienced severe emotional stress when he and his girlfriend, of nine years, broke up. This was

the "lowest time in his life." (See, Government Exhibit 5). He stopped paying his bills, he lost almost fifty pounds, and he had trouble sleeping. Since then, he has had serious financial difficulties. Many of his debts are still outstanding. He has not contacted the creditors, or set up any payment plans. He states that he would like to contact the creditors in the future, but he is not sure when he will do it. (Government Exhibit 3).

Subparagraph 1(a) The Applicant admits that he is indebted to a creditor in the amount of approximately \$303.00 for an account delinquent since March 1999. Due to financial hardship, the Applicant has been unable to make the payments. He is not sure when he will contact the creditor. (Government Exhibit 3).

Subparagraph 1(b) The Applicant admits that he is indebted to a creditor in the amount of \$134.00 for a delinquent account charged off as a bad debt. Due to financial hardship, the Applicant has been unable to make the payments. He is not sure when he will contact the creditor. (Government Exhibits 3).

Subparagraph 1(c) The Applicant admits that he is indebted to a creditor in the amount of approximately \$428.00 for an account delinquent since March 1999. Due to financial hardship, the Applicant has been unable to make the payments. He is not sure when he will contact the creditor. (Government Exhibits 3).

Subparagraph 1(d) The Government alleges that the Applicant is indebted to a creditor in the amount of \$302.64 for a delinquent account charged off as a bad debt. The Applicant believes that the debt was referred to collection and then he paid it. However, he has submitted no proof of payment.

Subparagraph 1(e) The Government alleges that the Applicant is indebted to a creditor in the amount of \$303.15 for a delinquent account. The Applicant is not sure whether he owes this debt. There is no evidence to show the Applicant owes this debt. Accordingly this allegation is found for the Applicant.

Subparagraph 1(f) The Government alleges that the Applicant is indebted to a creditor in the amount of \$37.00 for a delinquent account. The Applicant is not sure whether he owes this debt. There is no evidence to show the Applicant owes this debt. Accordingly this allegation is found for the Applicant.

Subparagraph 1(g) The Applicant admits that he was indebted to a creditor in the amount of approximately \$2,723.00 for a delinquent account charged off as a bad debt after his car was repossessed in August 1995. The Applicant believes that he negotiated a reduced amount and paid that amount to close the account. However, he has submitted no proof of this payment. (Government Exhibit 3).

Subparagraph 1(h) The Applicant admits that he is indebted to a creditor in the amount of \$114.67 for a delinquent account charged off as a bad debt in June 1996. Due to financial hardship, the Applicant has been unable to make the payments. He is not sure when he will contact the creditor. (Government Exhibit 3).

Subparagraph 1(i) The Applicant admits that he was indebted to a creditor in the amount of \$852.07 for a delinquent account since July 1997. The Applicant believes that he negotiated a reduced amount of \$300.00 and paid that amount to close the account. However, he has submitted no proof of this payment. (Government Exhibit 3).

Subparagraph 1(j) The Applicant's wages were garnished in about July 1997 by the state tax authority for back taxes owed in the amount of \$3,646.43 for tax year 1994. (Government Exhibits 3 and 8). The Applicant states that he paid the tax bill, but his wages were garnished for one or two pay periods before the garnishment was stopped.

Subparagraph 1(k) The Applicant's wages were garnished in about February 1998 for his child support payments, plus payment of child support arrearage in the amount of \$6,845.31, because he failed to pay child support voluntarily. (Government Exhibits 3 and 9). The Applicant states that all back child support and subsequent arrearage have been paid through September 2000, when his daughter turned eighteen.

The Applicant borrowed approximately \$4,000.00 from his parents that he has recently been able to pay back in part. He still owes them about \$1,500.00. He states that he presently lives with his parents which has improved his financial situation. He plans to move out in the near future, as he has become a financial burden for his parents. The Applicant's personal financial statement indicates that after he pays his monthly bills, he has about \$90.00 left. (Government Exhibit

5).

Paragraph 2 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he violated the misdemeanor provisions of Title 26, United States Code, Section 7203, and a State's Revised Statute, a felony, by failing to file annual income tax returns, as required.

The Applicant failed to timely file his 1994, 1995 or 1996 Federal and State Income Tax Returns within the time required. His failure to file his Federal income tax returns was in violation of Title 26, United States Code, Section 7203. His failure to file his State income tax returns was in violation of Section 19701, a state Revenue and Taxation Code. The Applicant states that he does intend to file these income tax returns, but he cannot say for sure when he will do it. (Government Exhibit 6). The Applicant states that he has paid the estimated tax required by both the Federal and State taxing authorities. He does not owe them any money.

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 Security Clearance Application (Standard Form 86) dated July 26, 1998. In response to question 34 which asked, "In the last seven years, have your wages been garnished for any reason?" the Applicant answered, "Yes", and listed his wage garnishment for child support. (See Government Exhibit 4, Question 34). The Applicant failed to list his 1997 wage garnishment by the State for unpaid taxes for tax year 1994. The Applicant explained that he completely forgot about his garnishment from the State tax board.

The same Application asked the Applicant in question 38 if, "In the last seven years, have you ever been over 180 days delinquent on any debt(s)," and, question 39, "Are you currently over 90 days delinquent on any debt(s)." The Applicant answered "No" to both questions. The Applicant failed to list his past and current delinquent debts set forth above. The Applicant states that he filled out the application from a computer disk. Without thinking, he clicked "No." When he realized that he had incorrectly marked the answer, it was too late. He made an attempt to correct the answer, but the program would not allow any changes. He states that when he turned the disk into the security department, he told them of the problem.

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.

Guideline J (Criminal Conduct)

Conditions that could raise a security concern:

1. any criminal conduct regardless of whether the person was formally charged;
2. a single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns:

None.

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, criminal conduct 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 has been financially irresponsible (Guideline F); that he violated Federal and State laws that require him to file annual income tax returns (Guideline J); 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.

In 1995, the Applicant was severely depressed and stopped paying his bills. Since then, although he continued to work full time he has done little or nothing to pay back his debts, and he does not even know when he will get around to contacting the creditors. For those few debts he claims that he has paid, he has submitted no proof of payment. In addition, the Applicant has failed to file his income tax returns for tax years 1994, 1995 and 1996 in violation of both Federal and State law. This shows extremely poor judgment. Accordingly, Guideline F (Financial Considerations) and Guideline J (Criminal Conduct) are found against the Applicant.

I have also considered the Applicant's excuses for failing to reveal his wage garnishment by the state for back taxes owed and his delinquent debts on his security clearance application of July 26, 1998. With the particular evidence that I have been provided, I do not find his excuses credible or believable. Consequently, the evidence proves that the Applicant has not been completely honest with the Government regarding his financial history. 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).

Furthermore, the Applicant has failed to submit a reply to the FORM, and has not provided this Administrative Judge with any 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 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 Paragraphs 1, (except as to subparagraphs 1.e. and 1.f.), 2 and 3 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.: For the Applicant.

Subpara. 1.f.: For the Applicant.

Subpara. 1.h.: Against the Applicant.

Subpara. 1.i.: Against the Applicant.

Subpara. 1.j.: Against 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.

Subpara. 2.e.: Against the Applicant.

Subpara. 2.f.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subpara. 3.a.: Against the Applicant.

Subpara. 3.b.: 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