

DATE: March 21, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-24560

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 21, 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 she 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 February 4, 2002. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on February 14, 2002, and she submitted no reply.

The case was assigned to the undersigned for resolution on March 18, 2001.

FINDINGS OF FACT

The Applicant is 46 years old. She is employed by a defense contractor as a Department Assistant, and is seeking to retain her security clearance in connection with her 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 she is financially overextended and at risk to engage in illegal acts to generate funds.

The Applicant was unemployed for an unknown period of time, and could not afford to pay all of her debts. For the past

two years, she has been in a recovery process from a two year marital separation that ended in a divorce, and left her with major depression.

The Applicant is indebted to a credit card company in the amount of \$5,431.72 for a delinquent account referred to collection after she failed to make monthly payments. As of February 29, 2000, the debt had not been satisfied, and the Applicant has no intentions of paying it. The Applicant explained that the original debt was approximately \$2,500.00. By not paying the debt, she allowed it to accumulate with interest and late charges to its present amount. She became so mad that she decided not to pay it. She has contacted the creditor who has indicated that it is a "charged off" account. (See, Applicant's Answer to SOR).

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because she intentionally falsified material aspects of her personal background during the clearance screening process.

The Applicant completed a Security Clearance Application (Standard Form 86) dated July 20, 1999. In response to question 35 which asked, "In the last seven years have you had any property repossessed for any reason?" the Applicant answered "NO." (See, Government Exhibit 4, Question 35). This was a false answer. In 1995, the Applicant's mobile home was foreclosed upon and repossessed after she was unable to make timely payments on the loan. The Applicant states that she realizes now that she should have answered "YES" to the question. When she filled out the application she had just begun her recovery process from her divorce and major depression. She stated that she never considered the incident a repossession, since she and her ex-spouse had voluntarily surrendered the mobile home to the lender.

The same application asked, "In the last seven years have you ever been over 180 days delinquent on any debts?" and, "Are you currently over 90 days delinquent on any debts?" The Applicant answered "NO" to both questions. (See, Government Exhibit 4, Questions 38 and 39). These were false responses. The Applicant had three delinquent debts, the credit card debt in the amount of \$5,431.72, the debt to the mortgage lender for the mobile home, and a debt to a doctor in the amount of \$350.00 that was ultimately sent to collection. She has since paid off the debt to the doctor. The Applicant now realizes that she should have answered "YES" to these questions.

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 downturn, unexpected medical emergency, or a death, divorce or separation).

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 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 her a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has been financial irresponsible (Guideline F); and that she has intentionally falsified material facts in her 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 her 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.

The Applicant was unemployed for an unknown period, went through a divorce, and has suffered from major depression, all of which impacted her ability to pay her debts on time. Since then, however, she had done little or nothing to pay back her debts. In fact, she states that she refuses to pay the debt set forth in allegation 1(a) of the SOR. This shows extremely poor judgment. Accordingly, Guideline F (Financial Considerations) is found against the Applicant.

I have considered the Applicant's excuses for failing to reveal her delinquent debts and her repossession on her security clearance application of July 20, 1999. With the particular evidence that I have been provided, I do not find her excuses credible or believable. Consequently, the evidence proves that the Applicant has not been completely honest with the Government regarding her 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 her personal background. This Applicant has not demonstrated that she 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).

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 Paragraphs 1 and 2 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.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.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