

DATE: February 13, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-26445

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's excessive indebtedness has not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On August 12, 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 clearance should be denied or revoked.

The Applicant responded to the SOR in writing on September 7, 2002, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 27, 2002. A notice of hearing was issued on December 10, 2002, scheduling the hearing for January 17, 2003. At the hearing the Government presented three exhibits. The Applicant presented no exhibits and he testified on his own behalf. The official transcript (Tr.) was received on January 31, 2003.

FINDINGS OF FACT

The Applicant is 34 years old. He has two and a half years of college and he is employed as an Electrician Journeyman by a defense contractor. He 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 and his girlfriend were together from 1986 until 1998. They lived together from 1991 until 1998. During this period, the Applicant worked and paid most of the living expenses, while his girlfriend attended college and law school. They frequently used credit cards thinking they could manage the payments, but soon found otherwise. When they separated, in 1997, the Applicant's understanding was that his girlfriend was going to pay for her debts. However, in reality, the Applicant was left with the responsibility of trying to pay their mutually incurred debts. The Applicant claims that most of the debts listed in the SOR are his ex-girlfriend's debts. The Applicant assumes responsibility for the debts because they were incurred with his credit or paid with their joint checking account. The Applicant also assumed all of the tax liability associated with a business that he and his girlfriend had together, so that it would not jeopardize his girlfriend's chances of obtaining employment after she graduated from law school.

The Applicant has now been laid off of his job. He has been unable to consolidate his debts and pay them off like he had hoped to. He plans to pay them off as soon as he is able. His ex-girlfriend is now an attorney working for the county prosecutor's office.

The Applicant is currently living with his mother in an attempt to save money. At the current time he does not have a bank account due to his past problem with bad checks.

Subparagraph 1(a) The Applicant is indebted to a bank in the amount of \$440.00 for a delinquent credit card debt that was opened in February 1990. The Applicant has not paid the debt and it remains outstanding.

Subparagraph 1(b) The Applicant is indebted to a State educational loan institution for four accounts in the amount of approximately \$11,783.00 opened in 1991. The Applicant stated that he is a member of a class action suit filed against the school to whom the loan was paid as it did not provide them with the education they contracted for. The Applicant has not paid the debt and it remains outstanding.

Subparagraph 1(c) The Government alleges that the Applicant is indebted to a city for approximately \$70.00 for an unpaid parking ticket since February 1996. The Applicant denies the debt, and is disputing this matter with the city. He claims that he did not possess the vehicle in 1996, and should not be held responsible for a ticket in 1996. He is awaiting a response from the city.

Subparagraph 1(d) The Applicant is indebted to a carpet cleaning company for approximately \$85.00 for an account opened in January 1996. The Applicant has not paid the debt and it remains outstanding.

Subparagraph 1(e) The Applicant is indebted to a telephone company in the amount of \$111.00. The Applicant has not paid the debt and it remains outstanding.

Subparagraph 1(f) The Applicant is indebted to a telephone company for three accounts in the amount of \$2,540.00. The Applicant testified that he is in the process of making an arrangement to pay the debt. The Applicant has not paid the debt and it remains outstanding.

Subparagraph 1(g) The Applicant is indebted to a department store in the amount of \$350.00 for an account opened in March 1997. The Applicant testified that he is in the process of making an arrangement to pay the debt. The Applicant has not paid the debt and it remains outstanding.

Subparagraph 1(h) The Government alleges that the Applicant is indebted to a medical office in the amount of \$120.00 for an account opened in July 1997. The Applicant denies the debt. He testified that he has no clue as to what the debt is for or how it was incurred. He has never received any payment requests or information on this account. He has requested documentation from the creditor and is awaiting their response.

Subparagraph 1(i) The Applicant is indebted to a telephone company in the amount of \$122.00 for a delinquent debt since April 1999. The Applicant has not paid the debt and it remains outstanding.

Subparagraph 1(j) The Applicant is indebted to a telephone company in the amount of \$159.00 for a delinquent debt

since October 1997. The Applicant has not paid the debt and it remains outstanding.

Subparagraph 1(k) The Applicant is indebted for a Federal tax lien in the amount of \$8,000.00 filed in October 1995. The Applicant has arranged to make payments of \$100 monthly, and has since reduced the debt to approximately \$5,000.00 and plans to continue to make payments until the debt is paid in full.

Subparagraph 1(l) The Applicant is indebted for a State tax lien in the amount of \$2,000.00 filed in June 2001. The Applicant has reduced the debt to \$850.00 and plans to continue to make payments until the debt is paid in full.

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.

Conditions 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 acts 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 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 been 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.

Unfortunately, the Applicant has not been able to pay most of his delinquent debts. Although the debts may have been acquired by his girlfriend during their relationship, they were incurred on his accounts through his line of credit and he is responsible to pay them. The fact is, all except two of the debts listed in the SOR, are the Applicant's debts, and they remain outstanding. He has made arrangements to pay the Federal and State back taxes, but the other creditors remain unpaid. The total amount owed is excessive and he has not been able to pay the debt. The total amount owed remains in excess of \$20,000.00.

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. The Applicant 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 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.: 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.: 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.

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