

DATE: April 11, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-26689

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Cambell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's excessive financial indebtedness has not been mitigated. He remains indebted to each of the creditors listed in the SOR, and there has been no good faith effort to resolve his financial situation. Clearance is denied.

STATEMENT OF THE CASE

On December 13, 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 January 13, 2003, 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 February 4, 2003. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on February 11, 2003, and he submitted no reply.

The case was assigned to the undersigned for resolution on March 21, 2003.

FINDINGS OF FACT

The Applicant is 36 years old. He is employed as a Security Guard by a defense contractor and is applying for a 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.

The Applicant became excessively financially indebted while he was in the Air Force from 1985 through 1995. At that time he was young and single, and spent a lot of money on things he could not afford. He frequently used credit cards to purchase things when he did not have the cash. When he left the service, his life changed, adding more financial responsibility. He got married, had a child and experienced periods of unemployment. He found it difficult to pay the bills he had earlier accumulated. Presently, spending money on his child has become his priority. As a result, he fell behind on his debts and has been unable to catch up. (*See*, Government Exhibit 5).

In his sworn statement to the Defense Security Service (DSS) on November 27, 2000, he indicated that he intended to go to a Consumer Credit Counselor (CCC) for assistance in arranging a debt consolidation program. He further indicates that if that did not work, he would contact his creditors himself and set up a payment plan. If he is unable to arrange payment plans with his creditors, he would file bankruptcy by March 31, 2001. The Applicant did not follow through with his stated intentions to DSS, and in his response to the SOR admits that each of the debts set forth in the SOR remain outstanding. (*See*, Government Exhibits 3, 5, 6 and 7).

Subparagraph 1(a) The Applicant is indebted to a telephone company in the approximate amount of \$437.00 as of October 18, 2002. This account remains outstanding.

Subparagraph 1(b) The Applicant is indebted to a creditor in the approximate amount of \$217.00 as of October 18, 2002. This account remains outstanding.

Subparagraph 1(c) The Applicant is indebted to a telephone company in the approximate amount of \$1,079.00 as of October 18, 2002. This account remains outstanding.

Subparagraph 1(d) The Applicant is indebted to a credit union in the approximate amount of \$4,041.00 as of October 18, 2002. This account remains outstanding.

Subparagraph 1(e) The Applicant is indebted to a cable company in the approximate amount of \$95.00 as of October 18, 2002. This account remains outstanding.

Subparagraph 1(f) The Applicant is indebted to a gas company in the approximate amount of \$159.00 as of October 18, 2002. This account remains outstanding.

Subparagraph 1(g) The Applicant is indebted to a creditor in the approximate amount of \$231.00 as of October 18, 2002. This account remains outstanding.

Subparagraph 1(h) The Applicant is indebted to a credit card company in the approximate amount of \$2,312.00 as of October 18, 2002. This account remains outstanding.

Subparagraph 1(i) The Applicant is indebted to a creditor in the approximate amount of \$9,306.00 as of October 18, 2002. This account remains outstanding.

Subparagraph 1(j) The Applicant is indebted to a department store in the approximate amount of \$2,312.00 as of October 18, 2002. This account remains outstanding.

Subparagraph 1(k) The Applicant is indebted to a bank in the approximate amount of \$2,543.00 as of October 18, 2002. This account remains outstanding.

Subparagraph 1(l) The Applicant is indebted to a bank in the approximate amount of \$4,143.00 as of October 18, 2002. This account remains outstanding.

Subparagraph 1(m) The Applicant is indebted to a tire company in the approximate amount of \$800.00 as of October 18, 2002. This account remains outstanding.

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 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.

During the ten years he spent in the Air Force, the Applicant was financially irresponsible and now he has to pay the price for it. Following his military career, he took on even more financial responsibilities when he got married and had a child. It is recognized that he has also experienced some periods of unemployment which have contributed to his financial problems. However, since March 2000, the Applicant has been employed full time with his current employer and has done very little, if anything, to satisfy any of his outstanding creditors. Although his sworn statement to DSS in November 2000, indicates that he planned to handle his financial affairs, he remains delinquent to each of the creditors listed in the SOR. The Applicant has either been unwilling or unable to satisfy his past overdue debts. His stated intention to pay his creditors is good, however, he has not made a good faith effort or shown a systematic pattern of payment to improve his financial situation. The total amount owed remains in excess of \$ 25,000.00.

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. 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 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.: Against 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.

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