

DATE: May 20, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-00974

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's excessive indebtedness, brought on by taking on more responsibilities than he could handle, his deliberate falsifications on his security clearance application concerning his outstanding judgment and several delinquent debts, have not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On October 7, 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, 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 November 13, 2002, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 15, 2003. A notice of hearing was issued on February 26, 2003, scheduling the hearing for March 11, 2003. The matter was rescheduled and the hearing was held on April 22, 2003, at which the Government presented nine exhibits. The Applicant presented four exhibits and testified on his own behalf. He also submitted one Post-Hearing Exhibit consisting of three enclosures. The official transcript (Tr.) was received on April 30, 2003.

FINDINGS OF FACT

The Applicant is 50 years old, and has a GED and several years of college. He is employed by a defense contractor as a Field Calibration Coordinator, and is seeking to retain his Secret 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 is retired from the Navy after twenty-two years of service. He has raised six daughters and is currently raising one of his grandsons. He realizes that over the years he has taken on more responsibilities than he should have, but he has always had the intention of paying his bills as soon as he was financially able to. At times he has had to work two jobs in order to pay his debts. (Tr. p. 27). He believes his current financial difficulties started when he lost a child custody case in the late 1980's.

Subparagraph 1(a) The Applicant admits that he is indebted to a creditor in the amount of approximately \$195.00 for an insufficient funds check in approximately February 1995. The Applicant claims that he has tried to make contact with the creditor, but the creditor has gone out of business. (Tr. p. 28).

Subparagraph 1(b) The Applicant denies that he is indebted to a the Bureau of Child Support Enforcement, in the approximate amount of \$10,060.00 for child support arrearage for reimbursement of welfare funds, plus interest owed since February 1996. The Applicant explained that he has been disputing this debt for several years, and as it is a complicated issue that has been misunderstood by the District Attorney's Office, he has been forced to write to the Governor concerning this matter. The Applicant contends that he has already paid this child support arrearage through a garnishment order issue by the Navy during his military service. (See, Applicant's Post Hearing Exhibit, enclosure 3). Presently, the Applicant is still trying to resolve the matter. (Tr. p. 30).

Subparagraph 1(c) The Applicant is indebted to a creditor in the approximate amount of \$382.35 for a judgment entered against him on August 13, 1997. The Applicant claims that he has paid off the judgment. (See, Applicant's Exhibit B and Tr. p. 32).

Subparagraph 1(d) The Applicant is indebted to a creditor in the approximate amount of \$451.00 for an account placed into collection in 1998. In the Spring 1998 the Applicant made a payment agreement but subsequently defaulted on this account. The Applicant states that his credit report shows a zero balance. (Applicant's Exhibit A and Tr. p. 34).

Subparagraph 1(e) The Applicant is indebted to a creditor in the approximate amount of \$442.00 for an account place for collection in March 2000. The Applicant submitted the bill to his insurance but it was not paid. He initially contested the bill, but is now trying to pay off the debt. (Tr. p. 35).

Subparagraph 1(f) The Applicant is indebted to a creditor in the approximate amount of \$113.00 for two utility accounts placed into collection in February and April 2000. Applicant states that he has paid this debt. (Applicant's Exhibit C).

Subparagraph 1(g) The Applicant is indebted to a creditor in the approximate amount of \$80.00 for an account charged off as a bad debt. The Applicant states that his credit report shows a zero balance.

Subparagraph 1(h) The Applicant is indebted to a creditor in the approximate amount of \$180.00 for two unpaid parking tickets that were placed for collection. The Applicant has paid off some of his parking tickets, but still owes approximately \$800.00. (Applicant's Exhibits B and D and Post-Hearing Exhibit, enclosure 2).

Subparagraph 1(i) The Applicant's personal financial statement of May 19, 1999, indicates that the Applicant is capable of paying his debts as is evidenced by a monthly remainder of \$1,305.00 after expenses. (Government Exhibit 3). The Applicant admits that he has been slow at paying his debts, but that he has always intended on paying them. He indicated that he repaid the Department of Veteran's Affairs over \$17,000.00 for his home loan that defaulted to regain his VA home benefits. He has also incurred expenses related to transporting his wife in and out of town to visit her dying brother that have caused him to fall behind on his other financial obligations.

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 (SF-86) dated January 6, 1999. In response to question 37, which asked, "In the last seven years have you had any judgments against you that have not been paid?" the Applicant answered "no". (See, Government Exhibit 1, Question 37). The Applicant failed to list his unpaid judgment for \$10,060.00. (See, Government Exhibits 2, 4, 7 and 8). The Applicant explained that at the time he completed the application, he believed the judgment had been settled. (Tr. p. 42).

The same questionnaire, in question 38, asked, "In the last seven years, have you been over 180 days delinquent on any debts?" the Applicant answered "Yes", and listed his delinquent debt owed to one Creditor. (See, Government Exhibit 1, Question 38). He failed to list that he was 180 days delinquent with three other creditors. (See, Government Exhibits 2, 4, 7 and 8). The Applicant explained that he was not keeping close track of his credit report as diligently as he should have, and was not aware that he had any other delinquencies.

The same questionnaire, in question 39, asked, "Are you currently over 90 days delinquent on any debts? The Applicant answered "no" to this question. (See, Government Exhibit 1, Question 39). This was a false response. The Applicant failed to list that he was 90 days delinquent with three of his creditors. (See, Government Exhibit 2, 4, 7 and 8). Again, the Applicant explained that he was not keeping close track of his credit report as diligently as he should have, and was not aware that he had any other delinquencies.

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:

6. The individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts.

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 him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant was, in the past, financially irresponsible (Guideline F); 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.

With respect to his finances, it is noted that the Applicant has experienced some family medical emergencies that have caused him to incur debt that he did not expect. Although he has expressed good intentions, most of his debt was actually incurred as a result of chronic overspending, taking on responsibilities for things that he really could not afford. Since then, he has failed to pay the majority of his past due debts or demonstrate that he has been responsible in handling these debts. He has made some effort to pay his bills, but not enough. He has paid several of his smaller debts,

but several others remain outstanding. Most importantly, his largest debt, for back child support in excess of \$10,000.00, remains outstanding. Despite the fact that this debt is in dispute and has been for several years, (as evidenced by documentation in the record), until this debt is resolved, and the Applicant's other smaller overdue creditors are paid, his indebtedness is excessive and disqualifies him for access to classified information. Accordingly, Guideline F (Financial Considerations) is found against the Applicant.

Although the Applicant claims that he did not intentionally conceal information from the Government on his security clearance application concerning his outstanding judgment and past due indebtedness, (as he claimed that he was not aware of them at the time), there is documentation in the record indicating that he knew or should have known about them. (*See*, Applicant's Post-Hearing Exhibits). With the particular evidence that I have been provided, I do not find his excuses credible or believable. I have been provided no reasonable excuse for the Applicant to have failed to reveal his financial details. If he did not know about them, he should have. The Applicant obviously has not handled his financial affairs in a swift and diligent manner. The Applicant was not truthful with the Government concerning his financial affairs. Consequently, the evidence proves that the Applicant has not been completely honest with the Government. None of the mitigating factors in the Directive apply. 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).

The Applicant has not provided this Administrative Judge with sufficient evidence in mitigation that would negate the negative impact his financial difficulties and falsifications have 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 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.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: For the Applicant.

Subpara. 1.d.: For the Applicant.

Subpara. 1.e.: Against the Applicant.

Subpara. 1.f.: For the Applicant.

Subpara. 1.g.: For the Applicant.

Subpara. 1.h.: Against the Applicant.

Subpara. 1.i.: 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.

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