

DATE: January 8, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-06505

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial indebtedness, brought on by a divorce and medical expenses related to a child's bipolar disorder, have been mitigated by a good faith effort to satisfy his debts and a systematic method of payment. The Applicant also indicates a credible intention to pay off his debts as soon as possible. Clearance is granted.

STATEMENT OF THE CASE

On August 11, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 August 29, 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 October 23, 2003. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on October 29, 2003, and did not submit a reply.

The case was assigned to the undersigned for resolution on December 3, 2003.

FINDINGS OF FACT

The Applicant is a 35 years old and is divorced. He is employed by a defense contractor as a Safety Inspector and is seeking to obtain 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 wife were married in 1994. In October 1996, they were separated, and they divorced in 1999. The Applicant contends that as a single parent, who is now solely responsible for supporting his child, he has been unable to resolve his past due debts that were incurred during his marriage. In an effort to pay his bills, he has juggled his payments to do his best. He has recently paid off one of his larger debts, owed to a military department store in the amount of \$567.00. He is currently making weekly child support payments toward another large debt (owed in the amount of \$4,709.00). The other four debts that remain outstanding total approximately \$800.00. The Applicant states that he plans to contact these creditors, and pay these bills as soon as he is capable.

The Applicant explained that his child, who has a bipolar disorder, requires regular medication and frequent hospitalization. This has also contributed to his past financial delinquencies. The Applicant indicates that he understands the importance of paying his debts. He has incurred no new debt since his divorce. His personal financial statement indicates that after he pays his monthly expenses, he has a monthly net remainder of only \$34.00. Therefore, he plans to attack each bill separately until they are all paid in full.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

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:

3. The conditions that resulted in the behavior were largely beyond the persons control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation).
6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

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 eligible for a security clearance. 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

The Government must make out a case under Guideline F (Financial Considerations), that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

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.

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations set forth under Guideline F, and they have a direct impact on his suitability for access to classified information.

With respect to the six delinquent debts alleged in the SOR, only four of them remain completely unsatisfied. The Applicant indicates that he has paid off one of the debts, and is currently making weekly payments towards another. The Applicant's divorce and its related expenses, as well as his child's medical conditions, have obviously adversely affected his financial affairs. Thus, mitigating condition 3, under Guideline F clearly applies in this case. Furthermore, the Applicant has initiated a good faith effort to satisfy his indebtedness and has set up a systematic pattern of payment to improve his financial situation. Mitigating condition 6, under Guideline F also applies. When the Applicant has completed one debt, he will go to the next debt, until each of his debts have been paid in full. He intends to pay off all of his outstanding creditors, as soon as he is capable. Presently, four debts remain outstanding, however, they are relatively small debts that total approximately \$800.00. Under the particular circumstances, the Applicant does not pose a risk to the national security. Accordingly, Guideline F (Financial Considerations) is found for the Applicant.

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: For the Applicant.

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge