

DATE: February 6, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-07930

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's personal conduct involving fraudulent activity resulting in his termination from employment in July 2000, has not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On July 24, 2003, 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 August 20, 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 November 10, 2003. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on November 25, 2003, and he submitted a reply to the FORM that is undated.

The case was assigned to the undersigned for resolution on January 23, 2004.

FINDINGS OF FACT

The Applicant is 29 years old and has a Bachelor's Degree. He is employed as a Security Guard 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 E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because his conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations.

The Applicant was terminated from his employment with a department store in July 2000, due to fraudulent activity. The Applicant, while employed as a loss-control supervisor, allowed non-employee friends to purchase merchandise using his store discount. The Applicant instructed the cashier that it was acceptable to give the Applicant's friends his employee discount. The Applicant then signed the receipts as the customers left the store. The Applicant was not prosecuted for the criminal offense. (*See*, Government Item 5).

As the loss-control supervisor of the department store the Applicant's duties, among other things, required him to prevent this type of fraud. The Applicant acted against store policy and in direct opposition to his duties.

The Applicant realizes that this was a horrible mistake. He states that he will never again instruct anyone to act against company policy. (*See*, Government Item 3, and Applicant's Response to FORM).

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 E (Personal Conduct)

Condition that could raise a security concern:

4. Personal Conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail.
5. A pattern of dishonesty or rule violations, including violations of any written or recorded agreement made between the individual and the agency.

Condition 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 personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or blackmail. This personal conduct 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 engaged in personal conduct or

concealment of information that increases his vulnerability to coercion, exploitation or duress. 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 failed to introduce persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

The evidence shows that the Applicant was terminated from his past employment for fraudulent activity. (Guideline E). The Applicant acted directly in opposition to his duties as loss prevention supervisor, responsibilities that he was entrusted with by his employer. There is insufficient evidence in the record to support the fact that the Applicant has sufficiently rehabilitated himself since July 2000, when he was terminated. The Applicant's personal conduct shows a pattern of dishonesty and rule violations, which is entirely unacceptable conduct. None of the mitigating factors apply. As a result, the Applicant poses a potential security risk and cannot be trusted with the national secrets. Accordingly, Guideline E (Personal Conduct) 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.

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