

DATE: November 16, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29636

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jason Perry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial indebtedness remains current and she has not made a good faith effort to resolve her debts. There is insufficient evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On April 27, 2004, 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 May 17, 2004, in which she 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 August 23, 2004, consisting of nine documents, referred to as Items 1 through 9. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on August 31, 2004, and she submitted no reply.

The case was assigned to the undersigned for resolution on November 1, 2004.

FINDINGS OF FACT

The following Findings of Fact are based on the Applicant's Answer to the SOR, and the exhibits. The Applicant is a 46 years old. She is employed by a defense contractor as a Secretary and is seeking to obtain her security clearance in connection with her 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 she is financially overextended and at risk to engage in illegal acts to generate funds.

The Applicant admits all of the allegations set forth in the SOR. (*See* Item 3). In April 1995, the Applicant's spouse purchased a home out of state. He then refused to pay any of the local household bills. The Applicant was pregnant at the time. Needless to say, the Applicant's financial situation deteriorated. In 1998, she filed for Chapter 7 bankruptcy. (*See* Item 9). All of her debts were included in the bankruptcy and discharged as a result. Not long after the bankruptcy she began receiving credit cards in the mail. She was foolish and decided to use them thinking that she could manage the monthly payments. She soon found out that she could not afford to pay both her credit card bills and her living expenses too. The Applicant is indebted to ten separate creditors set forth under subparagraphs 1(b) through 1(k) of the SOR. This total indebtedness amounts in excess of \$5,000.00. (*See* Items 1 and 3).

In a statement she provided to the Defense Security Service (DSS) dated August 8, 2002, the Applicant indicates that she has tried to make payments on most of her debts, but has only been able to pay them sporadically. Her personal financial statement dated August 8, 2002, indicates that she has a net remainder of \$87.00 after paying her monthly expenses. This does not include repayment of any of her debts. (*See* Item 5).

The Applicant anticipated a pay raise in October 2004, and planned to make her past due debts a priority. She believes that she may have her delinquent debts paid off in three or four years. (*See* Item 3).

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 instances 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 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 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 her 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 her finances, the Applicant has in excess of \$5,000.00 in delinquent debt. She has not presented any evidence to show that she has made or is making a good faith effort to pay off her past due creditors or resolve her financial indebtedness. With respect to most of her debts, she has done absolutely nothing. Upon review of her financial statement it appears that she simply cannot afford to pay her past due debts. There is no evidence of financial rehabilitation. All of the debts remain owing, and she remains heavily indebted. None of the mitigating conditions (MC) apply. *Her financial problems remain current, (MC) 1; they are not isolated, (MC) 2; and the Applicant has not initiated a good faith effort to repay his overdue creditors or otherwise resolve his debts (MC) 3.* Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing her 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.

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