

DATE: November 26, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29823

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's intentional falsification of his security clearance application concerning his employment history, in addition to his criminal conduct and his financial indebtedness has not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On February 12, 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 March 15, 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 July 3, 2003. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on July 14, 2003, and he submitted no reply.

The case was assigned to the undersigned for resolution on August 18, 2003.

FINDINGS OF FACT

The Applicant is 35 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 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 he intentionally falsified material aspects of his personal background during the clearance screening process.

The Applicant admits the allegations set forth in 1(a), 1(b),1(c),1(d), and 1(e)1, of the SOR under this guideline. He admits that he was terminated from employment by four of his previous employers.

In August 1993, he was terminated from employer A for violating company policy. The Applicant explained that he forgot to close and lock the trailer door of his truck which was against company policy. When he began to drive, his hand truck fell out and a vehicle ran over it. (*See*, Government Exhibit 9).

In May 1997, the Applicant was terminated from employer B for falsifying his time card and delivery report. The Applicant stated that on at least three occasions he took two hours at home for lunch. (*See*, Government Exhibit 9).

In April 1998, the Applicant was terminated from employer C for excessive tardiness. The Applicant states that he was arrested for Driving Under the Influence of Alcohol which prohibited the company's insurance from insuring him. (*See*, Government Exhibit 9).

In January 1999, the Applicant was a terminated from employer D after being written up for three disciplinary actions. The Applicant stated that because he was being given work from other driver's routes and did not feel it was fair, he refused to work. (*See*, Government Exhibit 9).

The Applicant completed a Questionnaire for National Security Positions (Standard Form 86), dated February 7, 2002. In response to question 20(d), which asked, "whether in the last seven years you had ever been fired, quit a job after being told you'd be fired, left a job by mutual agreement following allegations of misconduct, left a job by mutual agreement following allegations of unsatisfactory performance, left a job for other reasons under unfavorable circumstances." The Applicant responded, "YES," and listed that he had been terminated by employer C. (*See*, Government Exhibit 5). He failed to list that he had also been terminated by employers B and D within the last seven years.

The same questionnaire at question 38 asked the Applicant whether in the last seven years he has ever been over 180 days delinquent on any debts. The Applicant responded, "NO". (*See*, Government Exhibit 5). Question 39, of the questionnaire, asked the Applicant if he was currently over 90 days delinquent on any debts. The Applicant again responded, "NO". (*See*, Government Exhibit 5). These were both false answers. The Applicant failed to list his debts that were over 180 days delinquent within the last seven years, or those that were currently over 90 days delinquent as set forth below:

The Applicant is indebted in the amount of \$332.00 for two accounts turned over to collection in July 1999. (*See*, Government Exhibits 6, 10, 12, 13 and 14).

The Applicant is indebted in the amount of approximate amount of \$6,991.00 which was charged off in September 1997, that he does not intend on paying. (*See*, Government Exhibits 6, 10, 12, 13 and 14).

The Applicant is indebted in the amount of approximately \$5,469.00 for an account turned over to collection in July 1998. (*See*, Government Exhibits 6, 10, 12, 13 and 14).

The Applicant denies the allegations set forth in 1(e)2,1(f)1, 1(f)2, and 1(f)3, of the SOR under this guideline. The Applicant contends that he misunderstood the questions and that he did not deliberately falsify the security clearance application. Concerning his financial history, he claims that he did not realize that his accounts that had been "charged off" were listed on his credit report as more than 180 days delinquent. (*See*, Applicant's Answer to SOR).

I find that the Applicant knew or should have known he had to reveal his entire employment history including his employment terminations within the past seven years, and his past due indebtedness on his security clearance application. The fact that he did not reveal this information leads me to believe that he intentionally concealed this

information from the Government.

Paragraph 2 (Criterion J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct and violated a Federal criminal statute.

The Applicant admits the allegations set forth in 2(a), 2(b), and 2(c) of the SOR under this guideline. He admits that he was arrested in November 1993, for battery. (*See*, Government Exhibit 7).

In July 1997, he was arrested and was charged with Driving Under the Influence of Alcohol. A bench warrant was issued on September 2, 1997, for failure to appear. The bench warrant was canceled on September 17, 1997, when he appeared in court. The Applicant pled no lo contendere and was sentenced to five days in jail, suspended with credit for one day served, fined a total of \$636.00, and ordered to attend a first level alcohol program. (*See*, Government Exhibit 4).

As discussed earlier, the Applicant's deliberate and intentional falsifications on his security clearance application by concealing his adverse employment and financial history, are violations of 18 United States Code, Section 1001, a felony.

Paragraph 3 (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 denies all of the allegations set forth under this guideline. He admits to financial difficulties in the past, due to incurring high debt and earning small wages. As a result, he remains indebted to the three creditors discussed under Paragraph 1 above. Initially he stated that he had no intent to pay two of the three debts because they were charged off. He later stated that he has made attempts to pay each of the outstanding debts, but the debts were charged off, and he is unaware of how to satisfy them further.

The Applicant's personal financial statement dated April 1, 2002, indicates that he is capable of paying his debts as it reflects a net remainder of \$1,600.00 after expenses. (*See*, Government Exhibit 11).

The Applicant states that although his previous actions both personal and occupational show that he has used poor judgment, and that he has been unreliable and untrustworthy, he has now matured, as he is now a husband and a father who has learned from his earlier mistakes.

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:

None.

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.

Guideline J (Criminal Conduct)

Conditions that could raise a security concern:

1. Any criminal conduct, regardless of whether the person was formally charged;
2. a single serious crime or multiple lesser offenses.

Conditions that could mitigate security concern:

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 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 financially irresponsible (Guideline F); that he intentionally falsified material facts on his security clearance application (Guideline E), and that by doing so he violated 18 United States Code Section 1001 (Guideline J). 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, the Applicant has a history of excessive indebtedness and has made little effort, if any, to pay off his outstanding debts. His financial statement indicates that he is capable of paying his past due debts but obviously he has chosen not to pay them. None of the mitigation factors set forth in the Directive under Guideline F apply. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

It is unclear from the record why the Applicant did not reveal his employment and financial history in response to questions on his security clearance applications. Consequently, the evidence proves that the Applicant has not been completely honest with the Government regarding his employment and financial history I find that the Applicant deliberately failed to reveal this information to the Government. Thus, the Applicant has violated Section 1001, Title 18 of the United States Code which makes it a felony offense to knowingly falsify a government document.

None of the mitigation factors set forth in the Directive under Guidelines E and J apply.

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) and Guideline J (Criminal Conduct).

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, 2 and 3 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.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

Subpara. 2.c.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subpara. 3.a.: Against the Applicant.

Subpara. 3.b.: Against the Applicant.

Subpara. 3.c.: Against the Applicant.

Subpara. 3.d.: 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