

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant's financial indebtedness has improved but not enough to resolve his excessive indebtedness. His intentional falsifications on his security clearance application have not been mitigated. Clearance is denied.

CASENO: 02-31406.h1

DATE: 01/18/2006

DATE: January 18, 2006

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-31406

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Candace Le'i, Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant's financial situation has improved but not enough to resolve his excessive indebtedness. His intentional falsifications on his security clearance application have not been mitigated. Clearance is denied.

### **STATEMENT OF THE CASE**

On May 9, 2005, 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 June 2, 2005, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on August 17, 2005. A notice of hearing was issued on September 13, 2005, scheduling the hearing for October 19, 2005. At the hearing the Government presented twelve exhibits. The Applicant presented fifteen exhibits and testified on his own behalf. The record was left open to allow the Applicant to submit additional documentation. The Applicant submitted one Post-Hearing Exhibit consisting of five enclosures. The official transcript (Tr.) was received on November 1, 2005.

### **FINDINGS OF FACT**

The Applicant is 43 years old. He is employed by a defense contractor as an Electronic Technician and is seeking to obtain his 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 admits the seventeen delinquent debts set forth in the SOR, totaling over \$22,000. (*See Applicant's Answer to the SOR and Government Exhibits 5, 6,7 and 8*). He explained that while he was in the military, from 1981 until he retired in 2002, he could have paid his bills but just did not. The debts owed were for credit cards, loans, insurance, cellular telephone service, department stores and the like. His wife called the command and started an investigation. In 1998, until he retired in 2002, his security clearance was pulled due to his excessive indebtedness. (Tr. p. 44). The Applicant attributes this to poor money management, lack of discipline and irresponsibility. His financial statement dated October 2004, shows a net remainder of \$1,189.00.

The Applicant testified that he has been wanting to clear up his delinquent debts for a long time, but can't explain why he has not. He was able to pay his bills, he just did not pay them. The Navy even garnished his wages for failure to pay a \$1,200.00 debt to the Navy exchange. In May 2005, the Applicant contacted a consumer counselor to assist him on how to gain control of his finances. He obtained the information and has been working to clear up his financial indebtedness. He states that he has been prioritizing his bills with the intent to pay off the bigger bills first. (Tr. p. 75). He has paid off some of his debts and set up payment plans to pay others. (*See Applicant's A through O and his Post-Hearing Exhibit*).

The evidence shows that the delinquent debts in the SOR that have been paid, were paid between August and September 2005, although these debts have been owing since 1997. (*See Applicant's Exhibits A through O and his Post-Hearing Exhibit*). He has written at least one bad check since May 2005 and is still two months delinquent on his car payment. He has been unable to follow through with the payment schedule he set up with two of his creditors. (Tr. p. 68). The reason for this is because he has had to shuffle his money around in order to pay his delinquent debts. (Tr. p. 82).

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.

In September 1999, while the Applicant was in the Navy, he received non-judicial punishment for violation of the Uniform Code of Military Justice, specifically Absence Without Leave, Failure To Obey A Lawful Order and a False

Official Statement. The Applicant contends that he obtained permission to leave early from work to get his car repaired. It was later determined that the Applicant did not have permission to leave.

In a sworn statement to a Special Agent from the Defense Security Service dated May 3, 2000, when questioned about an alleged assault that he was a party to, the Applicant stated that he met the alleged victim at a hamburger restaurant the day of the alleged assault, that he could not recall how he met her, and that he gave her money. (See Government Exhibit 4). This explanation made no sense to the Special Agent. After extensive questioning, on May 12, 2000, the Applicant admitted that he was not honest and truthful with the Government during the first interview concerning the alleged assault. The Applicant explained that he actually met the assaulted victim about a week before the alleged assault, that he was introduced to her through a friend of his and that he had a sexual relationship with her on the beach one evening. They had also spoke on the telephone several times, and he had given her money to pay her pager bill. (See Government Exhibits 3).

I find that the Applicant deliberately lied to the Special Agent during his interview on May 3, 2000, concerning the alleged victim of the assault. Accordingly, I find against the Applicant under this guideline.

### **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:

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 status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

### 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 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 has been financially irresponsible (Guideline F) and he has been untruthful on 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, the Applicant has paid off some of his delinquent debt and set up payment plans to pay others. He has obviously been trying to clean up his credit situation. However, he is still having some problems. His car payment is two months delinquent and he has recently written a bad check. He has not made monthly payments to creditors as he promised. The evidence shows that he has not completely learned how to properly manage his finances.

There is some evidence of financial rehabilitation but not enough to demonstrate that he has a strong handle on his financial situation. Under Guideline F (Financial Considerations), Disqualifying Conditions (1) *A history of not meeting financial obligations* and (3) *Inability or unwillingness to satisfy debts* apply. None of the mitigating conditions (MC) apply. His 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).

With respect to Guideline E, the Applicant intentionally lied to the government about an alleged assault. With the particular evidence that I have been provided, there is no reasonable excuse for the lies. In addition, his misconduct in the Navy shows irresponsibility. Consequently, the evidence shows that the Applicant has not been completely honest with the Government regarding his criminal history and he sought to conceal the truth. Disqualifying Condition (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 status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities* applies. None of the mitigating conditions are applicable. I find that the Applicant deliberately failed to reveal this information to the Government.

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 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.: 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.

Subpara. 1.m.: Against the Applicant.

Subpara. 1.n.: Against the Applicant.

Subpara. 1.o.: Against the Applicant.

Subpara. 1.p.: Against the Applicant.

Subpara. 1.q.: Against the Applicant.

Subpara. 1.r.: Against the Applicant.



Subpara. 1.s.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: 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