

DATE: January 7, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31588

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has a history of past due indebtedness which she has not yet resolved. Insufficient evidence was shown that the Applicant has made current payments on any of her past due indebtedness. The Applicant did not falsify a security clearance questionnaire. However, based on her financial situation, insufficient mitigation is shown. Adverse inference is not overcome. Clearance is denied.

STATEMENT OF THE CASE

On September 4, 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 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 March 19, 2004, and requested that the Decision be made without a hearing. The Department Counsel submitted the File of Relevant Material (FORM) to the Applicant on July 9, 2004. The Applicant was given 30 days after receipt of the FORM to submit any additional information to the Administrative Judge. The Applicant acknowledged receipt the FORM on July 15, 2004, and elected to submit additional information, which was not objected to by Department Counsel. The case was received by the undersigned for Decision on October 13, 2004.

FINDINGS OF FACT

The Applicant is 49 and single. She is employed by a defense contractor as a logistics specialist, and she seeks to obtain a DoD security clearance in connection with her employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the 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. They are based on the Applicant's Answer to the SOR and the exhibits.

Paragraph 1 (Guideline F - Financial considerations). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she is financially overextended and that this conduct shows poor judgment and/or leaves her at risk of having to use illegal means to generate funds.

The Applicant admitted all of the allegations in the SOR. Those admissions are hereby deemed findings of fact.

1.a. The Applicant admits owing \$2,343.00 for a delinquent student loan. In her responses, the Applicant indicates that this debt may be the same as in subparagraph 1.b. The Applicant submitted documentation showing that she had made a payment arrangement with a predecessor creditor in 2003. (Government Exhibit 6 at 12.) However, there is no evidence as to the current status of this debt and the most recent credit reports still show it past due and owing. (Government Exhibit 8 at 1.)

1.b. The Applicant admits owing \$4,596.00 for a delinquent student loan. In her responses, the Applicant indicates that this debt may be the same as in subparagraph 1.a. The Applicant submitted documentation showing that she had made a payment arrangement with a predecessor creditor in 2003. (Government Exhibit 6 at 12.) However, there is no evidence as to the current status of this debt and the most recent credit reports still show it due and owing. (Government Exhibit 8 at 1.)

1.c. The Applicant admits owing \$367.00 for this delinquent account. There is no evidence that the Applicant has made any payments on this account.

1.d. The Applicant admits owing \$2,200.00 for a delinquent account with a department store. There is no evidence that the Applicant has made any payments on this account.

1.e. The Applicant admits owing \$1,031.00 for a delinquent credit card account. There is no evidence that the Applicant has made any payments on this account.

1.f. The Applicant admits owing \$1,124.00 for this delinquent account with a second department store. There is no evidence that the Applicant has made any payments on this account.

The Applicant submitted a statement in her response to the FORM dated August 16, 2004, concerning her debt situation. She says, "In the past two to three years my credit has improved and I have been paying my accounts that were delinquent at the time."

Paragraph 2 (Guideline E - Personal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she intentionally falsified material aspects of her personal background during the clearance screening process.

On June 27, 2001, the Applicant completed an official DoD questionnaire in which she stated that she had only one account that was over 180 days delinquent. (Government Exhibit 4, question 38.) In fact, at that time, the Applicant was also over 180 days delinquent with her student loans, set forth in subparagraphs 1.a. and 1.b., above.

In her Answer to the SOR, the Applicant states that it was not her intention to falsify her questionnaire. Rather, "At that time [when the questionnaire was filled out] I was not aware those bills in question were in default due to the fact in 1998 I had moved back to the state of . . . and I was unemployed for a short period of time. During my unemployment I contacted my creditors and I had informed them of my current situation."

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance

determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. 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:

(None of the stated conditions have application in this case.)

Guideline E (Personal conduct)

Conditions that could raise a security concern:

(None of the stated conditions have application in this case.)

Conditions that could mitigate security concerns:

(None of the stated conditions have application in this case.)

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 factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- 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 guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

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 a day. The Government is therefore appropriately

concerned where available information indicates that an Applicant for clearance may be involved in acts of financial mismanagement and falsification of government documents that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a 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

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 granting 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 by substantial evidence that the Applicant has many unpaid, past due debts (Guideline F); and that she made false statements on a security questionnaire (Guideline E).

The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against her, except in part. Regarding Paragraph 2, based on the available record, I find that there is insufficient evidence to show that the Applicant's failure to list her past due student loans was intentional as opposed to inadvertent. Accordingly, the Government has failed to prove this allegation.

The Applicant has a long "history of not meeting financial obligations." (Disqualifying Condition 1.) In addition, based on the available record, she is unable or unwilling to satisfy those debts. (Disqualifying Condition 3.) It is the Applicant's burden to show that she has made some actual effort to pay her debts or otherwise resolve her financial difficulties, as is required by Mitigating Condition 6. She has failed to do so, other than by making vague promises. That is insufficient. If she is able to provide concrete evidence that she has her financial affairs in order she may be eligible for a security clearance in the future. She is not now.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing her request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons. As set forth above, Paragraph 2 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: Against the Applicant.

Subparagraph 1.a.: Against the Applicant.

Subparagraph 1.b.: Against the Applicant.

Subparagraph 1.c.: Against the Applicant.

Subparagraph 1.d.: Against the Applicant.

Subparagraph 1.e.: Against the Applicant.

Subparagraph 1.f.: Against the Applicant.

Paragraph 2: For the Applicant.

Subparagraph 2.a.: For 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.

Wilford H. Ross

Administrative Judge