

DATE: April 29, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31874

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's history of financial indebtedness has not been mitigated by a good faith effort to repay his creditors or otherwise resolve his financial indebtedness. Clearance is denied.

STATEMENT OF THE CASE

On August 25, 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 September 22, 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 24, 2003. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on December 1, 2003, and did not submit a reply.

The case was assigned to the undersigned for resolution on April 26, 2003.

FINDINGS OF FACT

The Applicant is 39 years old. He is employed as a Installation Technician II 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:

The Applicant admits to each of the allegations set forth in the SOR. (*See* Government's Exhibit 3). One of the ten debts listed has been settled, another is in the process of being settled. The rest remain outstanding. (*See* Government Exhibit 3). The Applicant indicates that between November 2000 and June 2001, he became delinquent on several financial accounts due to overextending his credit. He then went to a consumer credit counseling agency for help. They consolidated his delinquent debts into one monthly payment of \$150.00 that he paid from about January 2001 until June 2001. Several of the Applicant's creditors did not accept his debt consolidation. The Applicant then stopped making payments toward the debts. He had hoped that all of his indebtedness would be paid off by 2002. (*See* Government Exhibit 6).

The Applicant states that he has recently received word that he has inherited money that will allow him to pay off most, if not all of his delinquent debts. (*See* Government Exhibit 3).

The Government's evidence, namely the Applicant's credit report, supports each of the allegations in the SOR. (*See* Government Exhibit 7). The following debts remain outstanding and owing by the Applicant:

The Applicant is indebted to a utility company in the approximate amount of \$138.00. Applicant's credit report indicates that as of May 6, 2003, the debt had not been paid. (*See* Government Exhibit 7).

The Applicant is indebted to a telephone company in the approximate amount of \$353.00. Applicant's credit report indicates that as of May 6, 2003, this debt had not been paid. (*See* Government Exhibit 7).

The Applicant is indebted to a telephone company in the approximate amount of \$145.00. Applicant's credit report indicates that as of May 6, 2003, this debt had not been paid. (*See* Government Exhibit 7).

The Applicant is indebted to a television company in the approximate amount of \$91.00. Applicant's credit report indicates that as of May 6, 2003, this debt had not been paid. (*See* Government Exhibit 7).

The Applicant is indebted to a city for three separate accounts totaling approximately \$196.00. Applicant's credit report indicates that as of May 6, 2003, this debt had not been paid. (*See* Government Exhibit 7).

The Applicant is indebted to a bank in the approximate amount of \$1,146.00. Applicant's credit report indicates that as of May 6, 2003, this debt had not been paid. (*See* Government Exhibit 7). The Applicant submitted documentation showing that the debt was settled in full as of July 23, 2003.

The Applicant is indebted to a bank in the approximate amount of \$879.00. Applicant's credit report indicates that as of May 6, 2003, this debt had not been paid. (*See* Government Exhibit 7).

The Applicant is indebted to a creditor in the approximate amount of \$1,132.00. Applicant's credit report indicates that as of May 6, 2003, this debt had not been paid. (*See* Government Exhibit 7).

The Applicant is indebted to a bank in the approximate amount of \$1,281.00. Applicant's credit report indicates that as of May 6, 2003, this debt had not been paid. (*See* Government Exhibit 7).

The Applicant is indebted to an education department in the approximate amount of \$623.00 for delinquent student loans. Applicant's credit report indicates that as of May 6, 2003, this debt had not been paid. (*See* Government Exhibit 7).

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.

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 was 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 his finances, the Applicant has a history of excessive indebtedness and has made little effort, if any, to pay off his outstanding debts or to further explain his financial situation. Only one of his debts has been settled. The Applicant indicates that he has recently received word that he has inherited money that will allow him to pay off his indebtedness. However, at the present time, all but one of these debts remain outstanding. His financial statement indicates that he is capable of paying some of his past due debts, which are not large, but for some reason he has chosen not to pay them. Disqualifying conditions (DC)1, a history of not meeting financial obligations; and (DC)3, an inability or unwillingness to satisfy debts, apply and have not been mitigated. The Applicant's financial problems remain current, (MC)1, they are not isolated (MC2), and the Applicant has not initiated a good faith effort to repay his overdue creditors or otherwise resolve his debts (MC)3. Consequently, I must find that none of the mitigating factors set forth in the Directive under Guideline F apply. 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.: For 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.

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