

DATE: March 31, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-18700

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant declared bankruptcy in 1997, and made considerable payments through the trustee until 2002. After the case was closed, the Applicant has continued to make payments to those creditors who were not successfully paid off through the bankruptcy. Of the allegations in the SOR, two have been paid off, one has been paid off at a reduced rate, two are being paid and the Applicant has been unable to contact the creditor on one. His current financial situation is stable and he is motivated to continue to pay his debts in a timely manner. Sufficient mitigation is shown. Adverse inference is overcome. Clearance is granted.

STATEMENT OF THE CASE

On August 29, 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 September 17, 2003, and requested that the case be decided without a hearing. The Government submitted its File of Relevant Material (FORM) to the Applicant on November 25, 2003. The Applicant was given 30 days from receipt of the FORM to submit any documents in rebuttal, extenuation or mitigation. The Applicant received the FORM on December 1, 2003, and submitted Additional Information on the same date. Department Counsel indicated on December 4, 2003, that he had no objection to the additional material. The case was received by the undersigned on January 29, 2004.

FINDINGS OF FACT

The Applicant is 35, married and has a Bachelor of Science degree in Electrical Engineering. He is employed by a

defense contractor as a Senior Digital Design Engineer, and he seeks to obtain a DoD security clearance in connection with his 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, the exhibits and the live testimony.

Paragraph 1 (Guideline F - Financial Considerations). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to obtain funds.

The record shows that the Applicant was in serious financial trouble when he left college in 1996. By 1997, he declared bankruptcy and for the next four years successfully paid his creditors through a Chapter 13 bankruptcy plan. When the case was concluded he had paid \$28,700 to the trustee, who then paid many of the Applicant's creditors, either completely or substantially. (Government Exhibit 7.)

After the bankruptcy case was completed, the Applicant contacted the remaining creditors in an attempt to work out a solution. Documents he supplied with his Answer, in his Additional Information, and in the Financial Interrogatories (Government Exhibit 9) show that he is successfully working at paying off his past due debts. The Interrogatories also show that he is financially stable and able to continue to maintain payments on his current indebtedness while paying off his remaining past due debts.

Subparagraphs 1.a. and 1.b. These two allegations concern student loans of the Applicant which were consolidated in the bankruptcy. The record shows that the trustee paid \$3,851.13 on this account. The record also shows that the balance due was reduced to \$1,231.43. (Government Exhibit 7 at page 1.) In his Answer to the SOR the Applicant states, "I am now paying only the remaining balance." The 2003 credit reports provided by the Government show these accounts as "Adjustment Pending," but do not provide any amounts. (Government Exhibit 10 at 2, and Government Exhibit 12 at 2.)

Subparagraph 1.c. The Applicant admits that he owes a debt of \$1,148.00 to this automobile company. In his Answer he states, "On numerous times, I have contacted Toyota Motor Credit Corp. at the following numbers: . . . and I was told that my case was forwarded to a collection agency. Up to this point, I haven't been contacted by any agency. Regardless, I called Toyota and someone should get back to me soon as to how to resolve this debt." The documentation provided by the Applicant shows he has been diligent in contacting all of his creditors. His statement concerning his contact with this creditor is credible and worthy of belief.

Subparagraph 1.d. The evidence shows that the Applicant owed this credit card company \$1,081.39. The bankruptcy records show that the Applicant paid \$446.10 to this creditor and the balance due was reduced to \$148.66. In his Answer the Applicant states, "I am now paying only the remaining balance."

The Government's own credit bureau records concerning the current status of this allegation are very unclear. Government Exhibit 5, dated October 2001, at page 5 show the last five digits of the account number as being 02016, balance due being \$712 and the payments being made under bankruptcy. Government Exhibit 8, dated April 2003, at page 2 shows the last five digits of the account number as being 35580, balance due being \$635 and that the account was in Chapter 13 bankruptcy. Government Exhibit 10, dated August 2003, at page 1 shows the last five digits of the account number as being 23893, balance due being \$335 and no further information. Government Exhibit 11, dated August 2003, at page 2 shows the last five digits of the account number as being 23893, balance due being \$335 and no further information. Finally, Government Exhibit 12, dated August 2003, at page 2 shows the last five digits of the account number as being 02016, and "Account legally paid in full for less than the full balance."

Subparagraphs 1.e. and 1.f. These allegations concern two credit card debts with the same bank. The Applicant made payment arrangements with a collection agency and paid both of them off in September and October 2003. (Applicant's Additional Information at 10-11.)

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)

Condition that could raise a security concern:

- (1) a history of not meeting financial obligations;

Condition that could mitigate security concerns:

- (6) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

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 irresponsibility 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 had financial problems in his past, which resulted in a bankruptcy and continuing indebtedness.

The Applicant, on the other hand, has introduced sufficient evidence to overcome the Government's case against him. Two of the debts, subparagraphs 1.e. and 1.f., have been completely resolved. The evidence is mixed, but based on the totality of the evidence, 1.d. has also been paid in a legal and satisfactory manner. Subparagraphs 1.a. and 1.b. have been substantially paid down and are being "adjusted." As for subparagraph 1.c., he has attempted to settle this account in a satisfactory manner but has been prevented from doing so by the creditor. His financial situation is now stable and he appears ready and willing to continue to pay his debts in a responsible manner.

The General Factors also apply and support a finding for the Applicant. He is motivated to continue paying his debts (factor g.), the evidence shows considerable evidence of rehabilitation (factor f.), there is no potential for coercion or pressure (factor h.), and the possibility of recurrence is virtually nil (factor i.).

On balance, it is concluded that the Applicant has overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding for the Applicant as to the 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: For the Applicant.

Subparagraphs 1.a. through 1.f.: For the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Wilford H. Ross

Administrative Judge