

DATE: April 20, 2004

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-23257

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's history of financial indebtedness, caused by a two year period of part-time seasonal employment from 1997 to 1999, has been mitigated by a good faith effort to resolve his indebtedness. His intentional falsification on his security clearance application concerning his financial history has not been mitigated. Clearance is denied.

**STATEMENT OF THE CASE**

On July 31, 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 30, 2003, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 20, 2004. A notice of hearing was issued on January 22, 2004, scheduling the hearing for February 25, 2004. At the hearing the Government presented three exhibits. The Applicant presented one exhibit and testified on his own behalf. The official transcript (Tr.) was received on March 11, 2004. The record was left open for five days to allow the Applicant to submit additional evidence. He submitted one Post-Hearing exhibit, consisting of a letter from the Applicant and seven letters of recommendation.

**FINDINGS OF FACT**

The Applicant is 28 years old and he has a high school diploma. He is employed as a Security Officer 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 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 to the indebtedness set forth in the SOR under this guideline. The Applicant explained that, before 1997, he had always paid his bills on time and had no financial problems. Between 1997 and 1999, he was working as a part-time, seasonal employee and did not earn enough money to cover his bills and support himself. As a result, he fell behind on his bills.

The Applicant was indebted to a fitness club for a delinquent account in the amount of approximately \$1,192.00 that had been charged off as a bad debt. Since gaining full time employment, the Applicant has paid this debt and it is no longer outstanding. (Tr. p. 29 and Applicant's Exhibit A).

The Applicant was indebted to a bank for a delinquent credit card account in the amount of approximately \$546.00 that had been charged off as a bad debt. Since gaining full time employment, the Applicant has paid this debt and it is no longer outstanding. (Tr. pp. 29-30 and Applicant's Exhibit A).

The Applicant was indebted to a bank for a delinquent credit card account in the amount of \$992.00 that had been charged off as a bad debt. Since gaining full time employment, the Applicant has paid this debt and it is no longer outstanding. (Tr. p. 30 and Applicant's Exhibit A).

The Applicant was indebted to a telephone company in the amount of \$45.00 for a delinquent debt that had been referred for collection. The Applicant has paid this debt and it is no longer outstanding. (Tr. pp. 30 and 38 and Applicant's Exhibit A).

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.

The Applicant completed a Questionnaire for National Security Positions (Standard Form 86), dated February 1, 2001. In response to question 28, which asked, "whether in the last seven years he had been over 180 days delinquent on any debts," the Applicant responded, "NO." (*See* Government Exhibit 1). This was a false answer. The Applicant failed to list those delinquent debts set forth in the SOR.

The Applicant contends that he did not deliberately falsify the security clearance application. During an interview with the Defense Security Service in May 2002, the Applicant stated that he did not think that his delinquent accounts would show up on his credit report and he did not want the information disclosed. (*See*, Government Exhibit 2). He testified at the hearing that he rushed through the application, and did not take the time to think about the question. (Tr. p. 39). He further stated that he did not know how important it was to reveal his financial history on the security clearance application. (Tr. p. 38). I find that the Applicant knew or should have known that he had to reveal his complete financial history, including his delinquent debts of 180 days on his security clearance application. The fact that the Applicant did not reveal this information leads me to find that he intentionally concealed this information from the Government.

Paragraph 3 (Criterion J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he violated a criminal statute.

As discussed above, the Applicant knowingly and wilfully provided false material information to DoD during the clearance screening process, specifically on his security clearance application dated February 1, 2001. In so doing, the Applicant violated Title 18, United States Code, Section 1001, a felony.

#### Mitigation.

Letters of recommendation submitted on the Applicant's behalf indicate that he honest, reliable, dependable and trustworthy. He is a good person and a dedicated employee. (*See* Applicant's Post-Hearing Exhibit).

## 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 include:

3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation);
6. The individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts.

### 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.

### Criterion 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 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, dishonesty and criminal conduct 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); and that he intentionally falsified material facts on his security clearance application (Guideline E); in violation of a federal criminal statute (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's history of excessive indebtedness was primarily caused by his part-time employment that was insufficient to pay his bills. The Applicant obtained new employment in 2000, and has made a good faith effort to repay his overdue creditors or otherwise resolve his financial indebtedness. Each of the four debts listed in the SOR have been satisfied and are no longer outstanding. He has incurred no new debt. Consequently, I find that mitigating factors 3 and 6 set forth in the Directive under Guideline F apply. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

There is no excuse for the Applicant's intentional falsification on his security clearance application. He knew or should have known that he was to be honest and truthful in answering the questions on the application. The fact that he did not think the information would show up on his credit report is no reason to conceal the information. The Applicant's failure to fully disclose his financial history and the extent of his indebtedness raises serious concerns about his suitability to hold a security clearance. This conduct is clearly in violation of Title 18, United States Codes, Section 1001, which is a felony. The Government relies heavily upon the integrity and honesty of clearance holders. It is a negative factor for security clearance purposes where an Applicant has deliberately failed to fully disclose material aspects of his or her personal background. The Applicant cannot be considered 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).

It appears that the Applicant has learned his lesson about the necessity of telling the truth to the Government at all times. The Applicant may well be eligible for a security clearance in the future. He is not now.

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 2 and 3 of the Government's Statement of Reasons. As indicated above, Paragraph 1 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: For the Applicant.

Subpara. 1.a.: For the Applicant.

Subpara. 1.b.: For the Applicant.

Subpara. 1.c.: For the Applicant.

Subpara. 1.d.: For the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subpara. 3.a.: 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