

DATE: July 26, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23862

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial indebtedness remains current and he has not made a good faith effort to resolve his debts. His intentional falsifications on his security clearance application have not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On January 29, 2004, 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 August 12, 2004, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 23, 2004. A notice of hearing was issued on December 22, 2004, scheduling the hearing for January 27, 2005. At the hearing the Government presented seven exhibits. The Applicant presented no exhibits, but he testified on his own behalf. The official transcript (Tr.) was received on February 11, 2005.

FINDINGS OF FACT

The following Findings of Fact are based on the Applicant's Answer to the SOR, and the Government's seven exhibits. The Applicant is 34 years old. He is employed by a defense contractor as a Security Guard 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 delinquent debts set forth in allegations, 1(d), 1(e), 1(g), 1(h), 1(k), 1(l), 2(b), 2(c), and 2(d) of the SOR. He denies the delinquent debts set forth in allegations 1(a), 1(b), 1(c), 1(d), 1(e), 1(f), 1(J) and 2 (a). (*See Applicant's Answer to the SOR*). With respect to the debts that he denies, the Applicant admits that they are all reflected on his credit reports, but either does not remember them or does not believe he owes them.

Credit reports of the Applicant indicate that he is indebted to twelve different creditors totaling an approximate amount of \$ 11,679.00. (*See Government Exhibits 2 and 5*). Each of the debts remains outstanding and delinquent, except a debt for a student loan in the amount of approximately \$20,000.00 that is currently being paid through involuntary garnishment. (*See Tr. pp. 37- 43 and Government Exhibit 4*). There is no evidence in the record that the Applicant has been paying any of the other creditors as agreed since 2002. He testified that he has had no contact with his past due creditors nor has he disputed any of the debts with the credit reporting agencies (*Tr. p. 38*).

The Applicant testified that as a college student he was so negligent in handling his financial affairs that he applied for credit cards, ran up the debt and could not afford to pay them. (*Tr. p. 28*). He also purchased a car that he could not afford. After September 11, 2001, he lost his job and could not pay his bills. For the past three years, he has been working for his current employer and he has tried to re-establish his credit, but he had not paid any of his delinquent debts. He has limited financial resources and is mainly concerned about paying his regular monthly expenses that include child support and his student loan garnishment.

Paragraph 3 (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 Security Clearance Application (Standard Form 86) dated August 5, 2002. Question 23(a) of the application asked the Applicant if he had ever been charged with or convicted of any felony offense. The Applicant answered, "NO". (*See Government Exhibits 1 and 7*). This was a false answer. The Applicant failed to disclose that he had been charged with burglary in July 2001. (*See Government Exhibit 6*). The Applicant testified that he believed and still believes that he was not charged with a felony. He had an outstanding warrant at the time and believes that is why he was detained.

The same questionnaire, question 23(f) asked the Applicant if in the last seven years had he been arrested for, charged with, or convicted of any offenses not listed in modules 21, 22, 23, 24, or 25. The Applicant answered, "NO". (*See Government Exhibits 1 and 7*). This was a false answer. The Applicant failed to disclose that he had been arrested for Failure to Appear in both December 1999 and July 2001. (*See Government Exhibit 4*).

The same questionnaire, question 27(d) asked the Applicant if in the last seven years had he had any judgment against him has not been paid. The Applicant answered, "NO". (*See Government Exhibit 1 and 7*). This was a false answer. The Applicant failed to list the fact that he had a civil judgment entered against him in August 2000 for \$1,741.00. (*See Applicant's Answer to SOR*). The Applicant explained that his judgment never really came to mind when he answered the question. (*Tr. p. 58*).

The same questionnaire, question 28(a) asked the Applicant if in the last seven years he had been over 180 days delinquent on any debts. The Applicant answered, "NO". (*See Government Exhibit 1 and 7*). This was a false answer. The Applicant failed to list any of his delinquent debts set forth in the SOR that remain owing and due. The Applicant explained that he thought his delinquent debt occurred more than seven years ago. (*Tr. pp. 57-58*). He believed that he had re-established his credit and did not consider his old debts. The Applicant also testified that at the time he filled out the application, he did not take the matter very seriously.

I find that the Applicant knew or should have known to reveal the truth about his arrest for burglary and his delinquent financial history. The fact that he does not believe he was charged with a felony, when he was, is no excuse. The fact that he conveniently has forgotten about these debts is also no excuse. I do not find any of the Applicant's excuses credible. He states that he did not take the process of filling out the application very seriously and it obviously shows.

Accordingly, I find that the Applicant deliberately attempted to conceal this information from the Government on his security clearance application.

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:

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 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 in excess of \$11,000.00 in delinquent debt. His student loan is being paid through involuntary garnishment. Other than one debt that he is paying, he has presented no other evidence to show that he has made or is making a good faith effort to pay off his past due creditors or resolve his financial indebtedness. Upon review of his financial statement, it appears that he may have a small remainder at the end of the month and obviously cannot afford to pay his past due debts. There is no evidence of financial rehabilitation. All of the debts, except the student loan debt that is being garnished remain owing, and he remains heavily indebted. 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 has presented no reasonable excuse as to why he did not reveal his complete arrest and financial history in response to questions 23(a), 23(f), 27(d), and 28(a) on his security clearance application. With the particular evidence that I have been provided, however, there is no reasonable excuse for his failure to answer the questions truthfully. 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.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

Subpara. 2.c.: Against the Applicant.

Subpara. 2.d.: 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