

DATE: September 16, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23839

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, 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 December 30, 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 January 28, 2005, 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), consisting of nine Government Exhibits referred to in the record as Government Exhibits 1 through 9, to the Applicant on June 17, 2005. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on July 8, 2005, and he submitted no reply. The case was received by the undersigned for decision on August 24, 2005.

FINDINGS OF FACT

The following Findings of Fact are based on the Applicant's Answer to the SOR, and the contents of the FORM. The Applicant is forty-one years old. He is employed by a defense contractor as a Senior Field Engineer 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(c), 1(d), 1(f), 1(h), 1(j), 1(k), 1(l), 1(m), 1(n), 1(o) and 1(r) of the SOR. He denies the delinquent debts set forth in allegations 1(a), 1(b), 1(e), 1(g), 1(i), 1(p), 1(q), 1(s), 1(t), and 1(u). (*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 is uncertain as to whether he owes them.

Credit reports of the Applicant indicate that he is indebted to 21 different creditors, 16 of which are collection accounts, totaling an approximate amount of \$ 30,000.00. (*See Government Exhibits 6, 7, 8 and 9*). Each of the debts remains outstanding and delinquent. There is no evidence in the record that the Applicant has been paying any of the creditors. There is no evidence that he has had any contact with his past due creditors and he is not disputing any of the debts with the credit reporting agencies.

The Applicant asserts that a business failure resulted in his losing more than \$50,000.00, an investment that he was expected to be paid back by his partners, but was not. As a result, he has not had sufficient monies to satisfy his financial obligations. Between 2002 and 2003, the Applicant was also supporting two separate households on one income and had no surplus available to pay all of his bills. The Applicant further asserts that his son had a chronic stomach disorder that caused the medical bills alleged in the SOR. As a result, the Applicant's house was ultimately foreclosed upon and his bills went into collection. He states that he chose not to file bankruptcy but instead contacted a debt counselor and started a program of repayment in 2002. There is no documentary evidence in the record showing any such payment program. The Applicant contends that his business partners have now only partially paid him back. The Applicant has had to result to litigation to obtain the money but has been unsuccessful. He may make another attempt soon.

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 Security Clearance Application (Standard Form 86) dated January 29, 2003. Question 38 of the application asked the Applicant if in the last seven years, has he ever been more over 180 days delinquent on any debts. The Applicant answered, "NO". (*See Government Exhibit 4*). This was a false answer. The Applicant failed to disclose that he was over 180 days delinquent on his debts set forth in allegations 1(a) through 1(j) of the SOR. (*See Government Exhibit 2, 6, 7, 8 and 9*).

The same questionnaire, at question 39, asked the Applicant, if he was currently over 90 days delinquent on any debts. The Applicant answered, "NO". (*See Government Exhibit 4*). This was a false answer. The Applicant failed to disclose that he was over 90 days delinquent on his debts set forth in allegations 1(a) through 1(l) of the SOR. (*See Government Exhibit 2, 6, 7, 8 and 9*).

The Applicant explained that he did not have his credit report when he filled out the SF-86, implying that he was unaware of his numerous delinquent debts. (*See Government Exhibit 2*). He later stated that his financial situation was in a "state of disarray", which would lead one to conclude that he knew about his financial indebtedness. (*See Government Exhibit 5*). His credit reports show at least 16 debts that have been in collection, some dating as far back as 1998-1999. (*See Government Exhibit*).

I find that the Applicant knew or should have known to reveal the truth about his delinquent financial history. The fact that he conveniently has forgotten about these debts is no excuse. I do not find any of the Applicant's excuses for not making some significant effort to resolve his delinquent debts to be credible. 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:

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 and dishonesty 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 \$ 30,000.00 in delinquent debt. It is noted that he was involved in a business venture that went bad, however, there is insufficient evidence in the record to explain why he is still unable to pay his bills. There is also some evidence to the effect that the Applicant's son suffered a stomach illness that caused medical bills, but the evidence is not sufficient to explain why the Applicant has still not paid some of these bills. I find all of the alleged debts to be valid and owing. As to those debts that the Applicant has denied, he had not documented any payoffs or other steps that he has taken to resolve them. He has presented no 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 now has some disposable income at the end of the month that he could use to pay his past due bills. However, he has failed to do so and has not explained how he will resolve them. There is no evidence of financial rehabilitation. 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 financial history in response to questions 38 and 39 on his security clearance application. With the particular evidence that I have been provided, 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.

Subpara. 1.m.: Against the Applicant.

Subpara. 1.n.: Against the Applicant.

Subpara. 1.o.: Against the Applicant.

Subpara. 1.p.: Against the Applicant.

Subpara. 1.q.: Against the Applicant.

Subpara. 1.r.: Against the Applicant.

Subpara. 1.s.: Against the Applicant.

Subpara. 1.t.: Against the Applicant.

Subpara. 1.u.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: 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