

DATE: April 9, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-01673

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 circumstances beyond his control, (mainly his ex-wife's chemical dependency) resulting in separation and divorce, has been mitigated by his filing of bankruptcy. His intentional falsifications on his security clearance application concerning his financial history have not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On September 30, 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 November 2, 2003, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 29, 2004. A notice of hearing was issued on February 4, 2004, scheduling the hearing for March 4, 2004. At the hearing the Government presented four exhibits. The Applicant presented twelve exhibits and called one witness. He also testified on his own behalf. The official transcript (Tr.) was received on March 23, 2004. The Applicant submitted one Post-Hearing exhibit on March 19, 2004, fifteen days after the record was closed on March 4, 2004, and therefore it will not be admitted into evidence.

FINDINGS OF FACT

The Applicant is 39 years old and has a high school diploma and two years of college. He is employed as a Tile Coating and Processing Technician 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 between 1995 and 1997, his wife's chronic use of drugs and alcohol caused them to fall behind on their bills. Initially they were both employed, but due to her sporadic work history, she eventually lost her job. The Applicant was then responsible to support five people on one income. Their marriage difficulties led to their separation in 1998, and a divorce in 1999, that caused more financial problems. In 2001, the Applicant obtained custody of his two children from the marriage, (the third child was his wife's from a previous marriage). The Applicant is now a single father supporting his two children. He and his children have moved in with his mother, while trying to restore his financial affairs.

The Applicant is indebted to a car company for a charged-off repossession in the amount of approximately \$8,256.00. The Applicant has filed for Chapter 7 bankruptcy to have this debt discharged. (*See Applicant's Exhibits A, B, C and D*).

The Applicant is indebted to a credit company in the amount of approximately \$1,856.00 for a delinquent debt. The Applicant has filed for Chapter 7 bankruptcy to have this debt discharged.

(*See Applicant's Exhibits A, B, C and D*).

The Applicant is indebted to a creditor in the amount of approximately \$90.00 for a delinquent debt. The Applicant has filed for Chapter 7 bankruptcy to have this debt discharged. (*See Applicant's Exhibits A, B, C and D*).

The Applicant is indebted to a creditor in the amount of \$200.00 for a delinquent debt. The Applicant has filed for Chapter 7 bankruptcy to have this debt discharged. (*See Applicant's Exhibits A, B, C and D*).

The Applicant's financial statement dated November 20, 2002, indicates that the Applicant has little or no money to pay his monthly expenses. (*See Government Exhibit 2*).

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 February 20, 2003. In response to question 38, 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 same questionnaire at question 39, asked the Applicant whether in the last seven years he had been over 90 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 same questionnaire at question 35, asked the Applicant whether in the last seven years he had any repossessions. The Applicant responded, "NO". (*See Government Exhibit 1*). This was a false answer. The Applicant failed to list his car that was repossessed in 1997. (*See Government Exhibit 1 and Tr. pp. 32-33*).

The Applicant explained that he did not list his financial delinquencies of 90 days, 180 days and his car repossession, on his security clearance application because he was embarrassed and was in the process of filing bankruptcy.

The Applicant contends that he did not deliberately falsify the security clearance application. I find that the Applicant knew or should have known that he had to reveal his complete financial history, including his delinquent debts of 90 days, 180 days and his car repossession, 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.

Applicant's witness, who is both his supervisor and security officer, testified that the Applicant is a reliable and trustworthy employee. He believed that the Applicant did not want to look like a deadbeat, and was so ashamed of his financial indebtedness that he failed to honestly answer the questions on his security clearance application. (Tr. p. 73).

The Applicant's performance appraisal for the period from May 30, 2002 to September 2002 indicates that he is fully competent in most areas, marginal in job knowledge and superior in attendance. (See Applicant's Exhibit L).

Letters of recommendation submitted on the Applicant's behalf indicate that he is a good person and a dedicated employee. (See Applicant's Exhibits F, I and K).

The Applicant's certificates of training, awards and promotions during his military service are exemplary. (See Applicant's Exhibits G, H and J).

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.

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 was financially irresponsible (Guideline F); and that he intentionally falsified material facts 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's history of excessive indebtedness was primarily caused by his ex-wife's chemical dependency and instability which led to their divorce. The Applicant's divorce has obviously caused additional financial hardship. In an effort to resolve his financial indebtedness, the Applicant has filed bankruptcy under Chapter 7. He has incurred no new debt since his divorce. The Applicant has initiated a good faith effort to repay his overdue creditors or otherwise resolve his debts. 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).

With respect to the Applicant's falsifications on his security clearance application, there is no excuse. He knew that he

was to be honest and truthful in answering the questions on the application. The Government relies heavily upon the integrity and honesty of clearance holders. It is a negative factor for security clearance purposes when an Applicant has deliberately provided false information about material aspects of his personal background. In this instance, the Applicant intentionally sought to conceal derogatory information concerning his financial background from the Government. Regardless of his degree of embarrassment by disclosing the truth, he must always tell the truth. In this case, he has not demonstrated that he is trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline E (Personal 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 Paragraph 2 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.

Subpara. 1.e.: For 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.

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