

DATE: September 8, 2004

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 03-04345

**ECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Department Counsel

**FOR APPLICANT**

Thomas M. Abbott, Attorney At Law

**SYNOPSIS**

Applicant's financial indebtedness has been mitigated by sufficient evidence of reform and rehabilitation. Her intentional falsifications on her security clearance application have not been mitigated. Clearance is denied.

**STATEMENT OF THE CASE**

On January 21, 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 February 19, 2004, (by notary dated February 20, 2004) and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on April 15, 2004. A notice of hearing was issued on June 23, 2004, scheduling the hearing for July 26, 2004. At the hearing the Government presented seven exhibits. The Applicant presented seventeen exhibits and she testified on her own behalf. The official transcript (Tr.) was received on August 17, 2004.

**FINDINGS OF FACT**

The Applicant is a 37 years old. She is employed by a defense contractor as the Facility Security Manager and is seeking to obtain her security clearance in connection with her 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 E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because she intentionally falsified material aspects of her personal background during the clearance screening process.

The Applicant admits the allegations set forth under this guideline in the SOR.

The Applicant completed a security clearance application dated September 20, 2000. Question 39 of the application asked her if she was currently over 90 days delinquent on any debts? The Applicant answered "NO". (See Government Item 1). This was a false answer. The Applicant was 90 days or more delinquent on those debts set forth below under paragraph 2.

The Applicant explained that she intentionally did not reveal her delinquent financial information on her security clearance application because she did not want her staff to know the information, most particularly, an individual with whom the Applicant had competed with for the job of security manager. The Applicant had experienced some problems with this individual and believed that she would use the information to discredit her. Thus, the Applicant chose not to answer the questions on her application truthfully. The Applicant also knew that a Special Agent from the Defense Investigative Service would subsequently be interviewing her, at which time she would disclose accurate information. In retrospect, she realizes that she should have handled the situation differently. The procedure in place at the time the applicant completed the application did not provide for complete privacy. The company has since changed its policy and now the procedure provides for more privacy.

The Applicant completed a security clearance application dated September 20, 2000. Question 40 of the application asked her if in the last seven years, she has been a party to any public record civil court actions not listed elsewhere on the form. The Applicant answered "NO". (See Government Item 1). This was a false answer. The Applicant had a civil judgment entered against her that was outstanding at the time she completed the application. (See Government Exhibit 7).

The Applicant failed to reveal this information on her security clearance application for the same reason stated above. She did not want her staff to know about it.

About two years after completing the security clearance application, the Applicant was interviewed by a Special Agent from the Defense Investigative Service. When the agent arrived for the interview he had a copy of her security clearance application and a copy of her credit report. (Tr. p. 32). During the interview, the Applicant indicated that she intentionally failed to list her delinquent credit accounts and civil judgment because she did not want her staff to know her financial history. She states that she revealed her debts and civil judgment to the special agent before he confronted her with the information. (Tr. p. 32). The Applicant subsequently shared her financial history and civil judgment with her boss and the president of the company.

Paragraph 2 (Guideline F - Financial Considerations) The Government alleges that the Applicant is ineligible for clearance because she is financially overextended and at risk to engage in illegal acts to generate funds.

The Applicant is a single parent whose child will be starting college soon. In 1999, she stopped receiving child support which caused her to fall behind on her payments to her creditors. In order to free up more money to pay her delinquent debts and cover her expenses, the Applicant sold her house last year. She now also earns about \$25,000.00 more than she did two years ago. Her only debts at the present time are her car payment, rent, two small credit cards and a student loan. The Applicant admits each of the allegations set forth in the SOR.

The Applicant was indebted to a creditor for a civil judgment entered against her in the amount of \$2,297.00. As of October 9, 2003, the debt had not been paid. The Applicant paid \$1,700.00 toward the debt. The Applicant plans to continue to make monthly payments until the debt is paid in full. (Tr. p. 34).

The Applicant was indebted to a creditor for a delinquent account that was placed into collection in the approximate amount of \$48.00. As of October 9, 2003, the debt had not been paid. The Applicant has paid off the debt. (Tr. p. 34).

The Applicant was indebted to a creditor for a delinquent account that has been placed into collection in the approximate amount of \$2,102.00. As of October 9, 2003, the debt had not been paid. The Applicant has since settled

the debt for \$1,039.00 and has paid it off in full. (Tr.p. 35).

The Applicant claims that a delinquent debt listed in the SOR in the amount of \$50.00 owed to a creditor was actually a debt in her daughter's name. As of October 9, 2003, the debt had not been paid. The Applicant has paid the debt in full.

The Applicant was indebted to a creditor for a delinquent account that charged off \$616.00 with a remainder of \$257.00 past due as of January 2002. As of October 9, 2003, the debt had not been paid. The Applicant has made payments toward the debt. Her current balance is \$125.00 on one of the accounts and \$78.85 on the other. She plans to pay them off as soon as possible.

## 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 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.

#### Conditions that could mitigate security concerns include:

None.

### 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:

2. It was an isolated incident.
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 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 her a security clearance.

In this case the Government has met its initial burden of proving that the Applicant falsified information on her security clearance application (Guideline E) and that she was financially irresponsible (Guideline F). 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 her 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 her finances, the Applicant has made a good faith effort to pay off her past due creditors and resolve her financial indebtedness. She now earns substantially more money than she did two years ago and she has substantially reduced her indebtedness so that she has the ability to pay her outstanding debts. Furthermore, she demonstrates a sincere commitment to pay off her debts as soon as possible. The Applicant's financial problems no longer remain current, (MC)1; it was isolated, (MC) 2; and the Applicant has initiated a good faith effort to repay her overdue creditors or otherwise resolve her debts (MC) 3. Consequently, I find that these mitigating factors set forth in the Directive under Guideline F apply. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

However, it is inexcusable for the Applicant to intentionally provide false information to the Government on her security clearance application, simply because she does not want people to know about it. She is the security manager of the company, and has a responsibility to set the example for other employees. The Applicant knew better, and should have revealed the truth regardless of its outcome. She knew accurate information is a vital requirement on her security clearance application and that 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 her personal back ground, the evidence proves that the Applicant has not been completely honest with the Government regarding her delinquent debts and her civil judgment. I find that the Applicant deliberately failed to reveal this information to the Government. None of the mitigation factors set forth in the Directive under Guideline E apply. This Applicant has not demonstrated that she 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).

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing her 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 of the Government's Statement of Reasons. Paragraph 2 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: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: For the Applicant.

Subpara. 2.b.: For the Applicant.

Subpara. 2.c.: For the Applicant.

Subpara. 2.d.: For the Applicant.

Subpara. 2.e.: For 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