

DATE: December 20, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-18523

ECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, 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. There is no evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On March 18, 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 a date uncertain, 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) to the Applicant on October 1, 2004, consisting of six documents, referred to as Items 1 through 6. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on October 19, 2004, and he submitted a reply on November 17, 2004.

The case was assigned to the undersigned for resolution on November 23, 2004.

FINDINGS OF FACT

The following Findings of Fact are based on the Applicant's Answer to the SOR, the six exhibits, and his reply to the FORM. The Applicant is 50 years old. He is employed by a defense contractor as a 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.

Prior to 1999, the Applicant had good credit and paid his financial obligations as agreed. In 1993, the Applicant and his wife separated. This caused some financial difficulties. In 1999, she filed for divorced and the Applicant's financial problems escalated. Since then the Applicant has been responsible to pay for child support for his three children, alimony to his ex-wife and related attorney fees. He has also had to pay for child support for a child he fathered out of wedlock in 1994. This has left him with approximately \$1,5000.00 less in monthly income than he had before the divorce. He simply has not been able to afford to pay off his overdue creditors. (See Government Items 3, 5 and 6).

The Applicant admits to each of the allegations set forth in the SOR, except 1(f). (See Government Item 3). The Applicant's delinquent debts total a sum of approximately \$10,000.00. The Applicant tried to make payments toward each of the debts but was inconsistent and could not do this with any regularity. He believes that the judgment that was entered against him in July 1999 for \$2,666.00 was paid through garnishment. The other debts remain outstanding and delinquent. (See Government Items 3 and 5).

The Applicant states that in a couple of months his alimony payments will be completed and that will free up a considerable amount of money that he will use to pay his delinquent debts. He also states that he is in the process of setting up a debt consolidation plan to pay off his debts as soon as possible. (See Applicant's Reply to FORM).

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.

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 his a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has been 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 his security clearance eligibility.

Admittedly, the Applicant's divorce in 1999 caused him some serious financial difficulties. However, five years has passed, and the Applicant has made no effort to demonstrate financial stability. 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 \$10,000.00 in delinquent debt. He has not presented any 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. Although he indicates that he is in the process of consolidating his debts to get them paid off sooner, there is no documentary evidence in the record to support this. Upon review of his financial statement, it appears that he has a small remainder at the end of the month but he has not been able to pay his past due debts. There is no evidence of financial rehabilitation. All of the debts remain owing, and he remains heavily indebted. 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).

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 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.

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