

DATE: November 28, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-26388

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Edward Loughran, Department Counsel

FOR APPLICANT

William Fenton Sink, Attorney At Law

SYNOPSIS

Applicant's delinquent financial indebtedness remains, and he has not made a good faith effort to resolve his debts. His intentional falsifications on his security clearance application are a violation of Title 18, United States Code, Section 1001, a felony, and have not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On February 11, 2005, 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 April 4, 2005, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on August 11, 2005. A notice of hearing was issued on August 11, 2005, scheduling the hearing for August 30, 2005. At the hearing the Government presented nine exhibits. The Applicant presented thirteen exhibits, called three witnesses, and testified on his own behalf. The official transcript (Tr.) was received on September 16, 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 57 years old and married. He is employed by a defense contractor as a Computer Science Specialist 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 was married and raising a family until about 1990, when he and his wife divorced. As a result of the split, she got the children and he got the bills. Their home was repossessed. The Applicant's life essentially fell apart and he stopped being responsible with his financial affairs. He states that it has taken a long time for him to recover.

The Applicant was in the active military service for four years and then joined the reserves until he retired in 1994. During certain periods of his military career he held a security clearance. From 1996 until 2000, the Applicant had his own computer consulting business, but was not successful. He remarried, and for the past five years has been working with his wife, who is an ordained minister, with her wedding business. This job did not amount to a lot of money and both of them fell further into debt. The Applicant gained stable full time employment in 2003. He has suffered some health problems that required hospitalization.

The Applicant admits the delinquent debts set forth in the SOR, but does not know how much he now owes or what he should now pay. (Tr. pp. 100-102). He attributes his delinquent debts to not having the money to pay them and not acting responsibly. (Tr. pp. 98 and 103). The sum of these delinquent debts totals in excess of \$30,000.00. He has hired experts to assist him in determining what to pay. In 2003, he made an arrangement with a bookkeeper to help him with his finances in exchange for computer consulting services. He gave her some information to start his books for 1989 and 2003, last summer. The bookkeeper died unexpectedly. Her assistant began helping the Applicant and then she left the firm. In May 2004, the Applicant retained the services of a Certified Public Accountant to advise him on how to clear up his liabilities on his credit report and to assist him in filing his income tax returns. (See Applicant's Answer to the SOR). The Applicant has recently filed his state and federal income tax returns for tax years 1997, 1998, 1999, 2000, 2001, 2002, and 2003. (Tr. pp.79 and 80). He expects to receive a tax credit for certain tax years.

As a result of the Applicant's failure to file both his state and Federal income tax returns in a timely fashion for tax years 1988, 1989 and 1990, he was assessed a tax liability for back taxes owed in the amount of \$13,119.70, in taxes, penalties and interest. A notice of tax lien was issued against him on July 3, 1995 for non-payment of his past due tax debt. The Applicant did not believe he owed the debt because he was self employed and believed that he did not make enough money to file taxes. (See Government Exhibit 2). The Applicant has not paid yet this debt. (Tr. p. 96).

Credit reports of the Applicant indicate that he remains indebted to six other creditors, for delinquent credit card accounts and back taxes totaling in excess of \$30,000. (See Government Exhibits 3, 4, and 5). Each of the debts remain 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 or that he is disputing any of the debts with the credit reporting agencies.

The Applicant's personal financial statement dated September 16, 2003, indicates a disposable income remaining in the amount of \$1,084.00 that can be used to pay his debts. In addition, the Applicant's wife testified that she recently inherited about \$400,000. (Tr. p. 71).

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 November 9, 2002. Question 36 of the application asked the Applicant if in the last seven years, have you had a lien placed against his property for failing to pay taxes or other debts. The Applicant answered, "NO". (See Government Exhibit 1). This was a false answer. The Applicant failed to list that a notice of Federal Tax Lien was filed against him on July 3, 1995, for non-payment of his past due tax due debt. (See Government Exhibit 6). The Applicant stated in his answer to the SOR that because the lien was over seven years old, he did not believe it was relevant, and therefore did not list it. (See Applicant's Answer to SOR). He testified that because he did not own any property at the time he completed the application, he could not have an outstanding tax lien. (Tr. p. 109). The excuses are inconsistent and it is unclear from the record exactly why he did not list the lien against him.

The same application, at question 38, asked the Applicant, if in the last seven years he had ever been 180 days delinquent on any debts. The Applicant answered, "NO". (See Government Exhibit 1). 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(e) of the SOR. (See Government Exhibits 3, 4 and 5). The Applicant states that he was not aware of what was on his credit reports and thought the accounts were closed out and not relevant anymore. (See Applicant's Answer to SOR and Tr. pp. 110-112).

Question 39, of the same application asked the Applicant if he was currently over 90 days delinquent on any debts. The Applicant answered, "NO". (See Government Exhibit 1 and Tr. pp. 111-112). 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(e) of the SOR. The Applicant states that he was not aware of what was on his credit reports and thought the accounts were closed out and not relevant anymore. (See Applicant's Answer to SOR).

I find that the Applicant knew or should have known to reveal the truth about his delinquent financial history. The fact that he conveniently did not know what was actually on his credit reports is no excuse. A person must be responsible enough to know or learn about their financial affairs. I do not accept any of the Applicant's excuses for not answering the questions truthfully. The Applicant first learned about the importance of the Security Clearance Application while in the active military and the reserves, when he held a security clearance. He understood that he was to be honest and truthful in answering the questions on the application. Accordingly, I find that the Applicant deliberately attempted to conceal his delinquent financial history from the Government on this most recent Security Clearance Application.

Paragraph 3 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct.

The Applicant intentionally failed to list his lien and his delinquent debts on his security clearance application in violation of Title 26, Section 7203 of the United States Code which is a felony.

Mitigation.

Two witnesses who are professional associates and coworkers of the Applicant testified on the Applicant's behalf. They consider the Applicant to be honest and trustworthy. They recommend him for a position of trust. (Tr. pp. 26-51).

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.

Guideline J (Criminal Conduct)

Conditions that could raise a security concern:

1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;
2. A single serious crime or multiple lesser offenses.

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 in delinquent debt. Although the Applicant has experienced some noted set backs over the years, such as a divorce, a business venture that was not successful, and some serious medical problems, these things were not the reason for his inability or his failure to pay his bills. He was simply irresponsible for a long period of time. Sufficient time has passed since these events, and the Applicant has had sufficient time to straighten up his financial affairs.

Presently, the Applicant has just begun the process of financial rehabilitation. He just filed his income tax returns which is a good thing. His debts, however, are still owing. There is insufficient evidence in the record to explain why he is still unable to pay his bills. Without considering the \$1,000.00 in disposable income reflected on his financial report of September 2003, given his wives' recent inheritance and the fact that the Applicant indicates that she is going to help him with his debts, I do not understand why they have not been paid. 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 36, 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 financial 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.

Under Guideline J (Criminal Conduct), Disqualifying Conditions (1) *any criminal conduct, regardless of whether the person has been formally charged* and (2) *a single serious crime or multiple lesser offenses* are clearly applicable. By deliberately falsifying his security clearance application, the Applicant has violated a federal criminal statute, Title 18, United States Codes, Section 1001, a felony. None of the mitigating conditions apply. On this basis, I conclude that the

criminal conduct remains current and is clearly not an isolated incident (Mitigating Condition 1 and 2). There is also no clear indication of the Applicant's rehabilitation. Accordingly Guideline J is found against the Applicant.

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 Paragraphs 1 , 2 and 3 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.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

Subpara. 2.c.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subpara. 3.a.: 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