

DATE: June 2, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 04-06237

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant had financial difficulties related to his career transition into the defense industry. He initiated good faith efforts to resolve his debts, and paid off all of the debts in the SOR between 2003 and 2005. He shows a credible intent not to have financial difficulties in the future. Clearance is granted.

STATEMENT OF THE CASE

On May 18, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, 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 a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on June 2, 2005, and requested that his case be decided without a hearing. On August 11, 2005, the Applicant requested a hearing in writing. The case was received by the undersigned on September 7, 2005, and a Notice of Hearing was issued on October 12, 2005.

A hearing was held on November 14, 2005, at which the Government presented six documentary exhibits. Testimony was taken from the Applicant, who also submitted nine exhibits. The transcript was received on November 30, 2005.

FINDINGS OF FACT

The Applicant is 42, single and has a high school diploma. He is employed by a defense contractor as an ADP lab mechanic, and he seeks to retain a Secret-level DoD security clearance previously granted in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a continued security clearance, based upon the 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. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline F - Financial Considerations). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to procure funds.

1.a. The Applicant made a payment arrangement with this creditor and paid \$1,500.00 on April 4, 2005. (Applicant's Exhibit A.)

1.b. The Applicant made a payment arrangement with this creditor and paid \$775.00 using check by phone in April and May 2003. (Applicant's Exhibit B.)

1.c. The Applicant made a payment arrangement with this creditor and paid \$663.08 on February 23, 2004. (Applicant's Exhibit C.)

1.d. The Applicant made a payment arrangement with this creditor and paid \$575.02 on March 23, 2005. (Applicant's Exhibit D.)

1.e. The evidence shows that this debt is the same described under subparagraph 1.a., above. (Government Exhibit 5, Applicant's Exhibit A.)

1.f. The Applicant made a payment arrangement with this creditor and paid \$1,933.85 on March 23, 2005. (Applicant's Exhibit E.)

1.g. and 1.h. Applicant's Exhibit F at page 3 showed that the creditor in subparagraph 1.h. sold the debt to the creditor in subparagraph 1.g. The Applicant agreed to be the co-signer for the daughter of his girlfriend. When the daughter was unable to make the payments, the creditor came to the Applicant. The original debtor is now making payments on this account. (Applicant's Exhibit F.) The Applicant recognizes his continuing responsibility to make sure this debt is paid. (Transcript at 27-30.)

The Applicant's financial difficulties began when he changed careers in 1998 and began working in the defense industry. Before that time, he had been a construction worker and was making about \$50,000 a year and had good credit. Because he came into the defense industry without any specific knowledge, the Applicant had to start at the bottom of the pay scale and work his way up. His pay decreased significantly and he was unable to maintain his debt payments. As he worked his way up the pay scale, the Applicant was able to save enough money to pay off his past due debts. (Transcript at 36-38.)

The Applicant is up to date on his car payments. (Applicant's Exhibit I.) He has no other long term indebtedness. (Transcript at 38-39.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case will be

set forth under CONCLUSIONS, below.

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 factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- 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 guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

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 a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may have financial difficulties that demonstrate poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a 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

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 continued 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 or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has a history of not being able to meet his financial obligations (Guideline F).

The Applicant, on the other hand, has successfully mitigated the Government's case. The Applicant began having problems after he changed careers from construction to the defense industry. In attempting to better his life, the Applicant ran into some short term problems.

The evidence shows that, since 2003, the Applicant has paid off all of the debts alleged in the SOR. They were all paid before issuance of the SOR as the Applicant obtained sufficient funds. His current financial situation is stable. The Applicant shows knowledge of his finances and a credible intention not to get in financial difficulties again.

Disqualifying Condition E2.A6.1.2.1. applies to the facts of this case (*A history of not meeting financial obligations*). Mitigating Condition E2.A6.1.3.6. also applies to the facts of this case (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

In addition, application of the General Factors is appropriate and supports a decision in the Applicant's favor. The Applicant is motivated to continue to be financially frugal (factor g.), he shows considerable evidence of rehabilitation (factor f.), and, under the circumstances of this case, the probability that the Applicant will have financial difficulties in the future are virtually nil (factor i.)

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for 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: For the Applicant.

Subparagraph 1.a. through 1.h.: For the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Wilford H. Ross

Administrative Judge