

DATE: June 27, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 04-09956

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's delinquent financial indebtedness has not been resolved and his intentional falsifications on his security clearance application and signed sworn statement are violations of Title 18, United States Code, Section 1001, a felony, and have not been mitigated. His illegal drug use and related criminal arrests are not recent and have been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On July 12, 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 November 25, 2005, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on December 28, 2005. A notice of hearing was issued on February 8, 2006, scheduling the hearing for March 7, 2006. At the hearing the Government presented eighteen exhibits. The Applicant presented five exhibits and testified on his own behalf. The official transcript (Tr.) was received on March 21, 2006.

FINDINGS OF FACT

The Applicant is 56 years old, married, has a Bachelors Degree in Mathematics, and is currently working toward obtaining his teaching credentials. He is employed by a defense contractor as a Consulting Systems 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.

The Applicant began working for a defense contractor in 1972, and held a security clearance from 1972 until 2000. He indicates that he also held a facility security clearance under his corporation name for approximately fifteen years of this period. He was unemployed for a two year period, from November 2000 until November 2002. During this period, in February 2001, he divorced his wife, and in April 2002, remarried. He started working for his current employer in April 2003. He is presently on a leave of absence pursuing his teaching credentials. (See Applicant's Exhibit D).

The Applicant is indebted to 37 separate creditors totaling approximately \$49,000.00. He admits 13 of these creditors totaling approximately \$23,000.00. (See Tr. p. 63 and Applicant's Answer to the SOR). He denies the others. The Applicant contends that the debts he denies are not his as he was a victim of identity theft. The debts he admits are medical bills, credit cards, and tax debt. The Applicant has done nothing to satisfy any of the debts listed in the SOR because he cannot afford to based upon his current income.

The Applicant attributes all of his financial problems to his past legal battles, his divorce and his drug use. After losing a medical malpractice lawsuit in 1997, and a subsequent appeal, that was filed on behalf of his step-daughter who was brain damaged in a hospital stay, the Applicant was in financial trouble. He was also trying to support his then wife's failing business and could not afford to. He was forced to file Bankruptcy in 1998, and discharged almost \$100,000 in debt. (See Government Exhibit 8). His marriage was strained, and a divorce followed in 1999. During the course of the lawsuit, the Applicant believes that he was also the subject of harassment. Several other events occurred that caused the Applicant great grief. Four of his car engines blew up in a one year time span. His home was broken into. He was beaten in the head by two men and several weeks later he was diagnosed with double pneumonia. He had three different encounters with law enforcement and on one occasion was beaten and arrested.

The Applicant also claims that he was a victim of identity theft but at that point his credit was already in bad shape and so he did nothing about it. (Tr. pp. 68-69 and Applicant's Exhibit C). Credit reports of the Applicant indicate that the debts in the SOR remain owing. (See Government Exhibits 3, 4 and 5). The Applicant also contends that his ex-wife may have been incurring debts in his name, however he has not investigated the matter. (Tr. p. 71).

He currently takes home approximately \$2,600.00 a month of which \$400.00 is taken out for spousal support and arrearages. He stated that he currently owes about \$90,000.00 in back spousal support. (Tr. pp. 72-73). The only way he is now able to make ends meet is to use his credit cards and they are very close to being maxed out. (Tr. p. 77).

Paragraph 2 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct.

In February 19, 2000, the Applicant was arrested and charged with (1) Possession of Controlled Substance, methamphetamine, felony and (2) Obstructing Public Officer. The Applicant explained that he was upset and emotionally traumatized because he believed that his girlfriend was not being faithful to him. He went to the hotel that he thought she was at and started pounding on the doors. The police were summoned and the Applicant was arrested. Prior to and after his arrest, the Applicant contends that he was beaten by police for no reason. The Applicant showed a portion of a videotape of the purported beating and placed a CD copy of the incident in the record. (See Applicant's Exhibit E). The Applicant pled not guilty and the case was dismissed in April 2001, based upon a motion to suppress, which was granted as a result of a warrantless arrest.

Nine months later, the Applicant was arrested again on November 22, 2000, and charged with Under the Influence of Controlled Substance. The Applicant explained that his girlfriend was supposed to meet him at a hotel and she did not show up. He became emotionally distraught about it and locked himself out of his room. He was sitting outside crying about it when the police arrived. The Applicant had been using methamphetamine the morning before the incident. He pled guilty and judgment was deferred for 18 months. He was ordered to participate in a deferred entry of judgment program for first offenders and was fined \$100.00. (See Government Exhibit 6).

Paragraph 3 (Guideline H - Drug Involvement). The Government alleges that the Applicant is ineligible for clearance because he has abused illegal substances.

The Applicant was granted a Secret level security clearance from the Department of Defense on June 22, 1995. He admits to using methamphetamine and valium between 1997 to at least 2001, while holding a security clearance. His wife introduced him to the drug which he started using on a weekly basis. His methamphetamine use gradually increased over time. He began purchasing it for his use and purchased it about 40 times. He used methamphetamine to wake him up. Sometimes he would use methamphetamine before going to work. He explained that he was using illegal drugs to try to help him cope with everything going on in his life. (Tr. p. 58). He also used valium to help him relax during emotional situations. He used valium about 100 times from January 1999 to May 2001. He got it from his ex-wife who had a prescription for it. When the prescription ran out, he and his ex-wife would travel down to Mexico to purchase it. The Applicant also used cocaine, and during high school he used marijuana.

In August 2001, he realized that his drug use, divorce and legal battles were taking a toll on him and his life was spinning out of control. He sought out help from his Employers Assistance Program. On August 15, 2001, he entered a drug treatment program that continued until October 19, 2001. Following that he received drug related counseling from November 20, 2001 to April 20, 2002. Drug test results from the Applicant's drug program are all negative. (See Applicant's Exhibit B). Since entering the drug treatment program he has not used any illegal drugs and he has no intention of ever using any in the future. (See Government Exhibit 9).

Paragraph 4 (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 dated April 25, 2003, that was electronically submitted on April 29, 2003. Question 27, of the application asked him if since the age of sixteen or in the last seven years, whichever is shorter, had he illegally used any controlled substance. The Applicant answered "YES", and listed methamphetamine use from March 1999 to November 2000. (See Government Exhibits 1 and 15). This was not an accurate response. The Applicant failed to disclose that he used methamphetamine from about 1997 to May 2001. (See Government Exhibit 2). The Applicant explained that this was an emotionally painful time for him and he was confused about the dates.

Question 38 of the same application asked the Applicant if in the last seven years he has been over 180 days delinquent on any debts. The Applicant answered "NO". (See Government Exhibits 1 and 15). This was a false answer. The Applicant was in fact over 180 days delinquent on the debts set forth in the SOR under allegations 1(b.) through 1(k.k.), that include 37 separate delinquent debts owed to creditors. The Applicant testified that he was not going to pay the debts so he did not admit them. (Tr. pp. 86).

Question 39 of the same application asked the Applicant if he was currently over 90 days delinquent on any debts. The Applicant again answered "NO". (See Government Exhibits 1 and 15). This was a false answer. The Applicant was in fact over 90 days delinquent on the debts set forth in the SOR under allegations 1(b.) through 1(k.k.), that include 37 separate delinquent debts owed to creditors. The Applicant testified that he was not going to pay the debts so he did not admit them. (Tr. pp. 86).

The Applicant provided a signed sworn statement to the Defense Security Service (DSS) dated June 28, 2004, wherein he stated that he started using illegal drugs in approximately 1999. This was not an accurate statement. The Applicant had in fact been using illegal drugs since 1997. (See Applicant's Answer to SOR).

I find that the Applicant knew or should have known to reveal the truth about the extent of his illegal drug involvement and his delinquent financial history. I do not accept any of the Applicant's excuses for not answering the questions truthfully. Given the almost twenty-five years that he has held a security clearance, he understood that he was to be honest and truthful in answering the questions on the application and in his sworn statement to DSS. The Applicant intentionally failed to list his delinquent financial history on his security clearance application in violation of Title 18, United States Code, Section 1001, a felony. Accordingly, I find that the Applicant deliberately attempted to conceal the extent of his illegal drug use and his delinquent financial history from the Government on this most recent Security Clearance Application and in his signed sworn statement to DSS.

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 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:

- (1) The criminal conduct was not recent;
- (5) There is clear evidence of successful rehabilitation.

Guideline H (Drug Involvement)

Conditions that could raise a security concern:

1. any drug abuse;
2. illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution.

Conditions that could mitigate a security concern:

- (1) the drug involvement was not recent;
- (3) a demonstrated intent no to abuse any drugs in the future.

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.

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, criminal conduct, drug involvement 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); he has engaged in criminal conduct (Guideline J); he has used illegal drugs (Guideline H); he has been untruthful on his security clearance application (Guideline E); and by doing so he has violated a federal criminal statute

(Guideline J). 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 not made any attempt to pay any of his creditors. They remain outstanding and delinquent. There is no evidence of financial rehabilitation. The Applicant has not demonstrated that he can properly handle his financial affairs. 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 I cannot say that the Applicant has 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, (Personal Conduct), the Applicant intentionally lied to the government about the extent of his illegal drug use and his delinquent financial history. With the particular evidence that I have been provided, there is no reasonable excuse for the falsifications. The Applicant held a security clearance and/or a facility security clearance for almost twenty-five years and obviously understood the importance of the security clearance application. 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. Accordingly Guideline E is found against the Applicant.

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. The Applicant's two arrests and convictions in 2000, involved drug use that he no longer is involved in, and there is no evidence that he has been arrested or convicted of any other crimes since then. On this basis, I conclude that the Mitigating Conditions *(1) The criminal conduct was not recent*, and *(5) There is clear evidence of successful rehabilitation* apply. However, by deliberately falsifying his security clearance application and information in his sworn statement to DSS, the Applicant has also violated a federal criminal statute, Title 18, United States Codes, Section 1001, a felony. Accordingly, except for allegations 2(a.) and 2(b.), Guideline J is against for the Applicant.

Under Guideline H, (Drug Involvement), Disqualifying Condition *(1) any drug involvement*, and *(2) illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution* apply. The Applicant's extensive history of drug abuse occurred between 1997 and 2001. There is no evidence in the record that the Applicant has used any illegal drug since his drug treatment program began in August 2001. Progress notes from the program indicate that he was successful and received a satisfactory rating. He states that he has been drug free for five years. He is commended for this drug free lifestyle and encouraged to continue to permanently abstain from drugs in the future. Hopefully, the Applicant has made a permanent lifestyle change, is on the road to recovery, and will remain drug free. Mitigating Conditions *(1) the drug involvement was not recent*, and *(3) a demonstrated intent not to abuse any drugs in the future* apply. Accordingly, Guideline H is found for 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 4 of the Government's Statement of Reasons. Paragraph 3 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.

Subparas. 1.a.: through 1z.: Against the Applicant. Subparas. 1a.a. through 1.k.k. Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: For the Applicant.

Subpara. 2.b.: For the Applicant.

Subpara. 2.c.: Against the Applicant.

Paragraph 3: For the Applicant.

Subpara. 3.a.: For the Applicant.

Subpara. 2.b.: For the Applicant.

Subpara. 2.c.: For the Applicant.

Subpara. 2.d.: For the Applicant.

Subpara. 3.e.: For the Applicant.

Subpara. 2.f.: For the Applicant.

Subpara. 2.g.: For the Applicant.

Subpara. 2.h.: For the Applicant.

Paragraph 4: Against the Applicant.

Subpara. 4.a.: Against the Applicant.

Subpara. 3.b.: Against the Applicant.

Subpara. 3.c.: Against the Applicant.

Subpara. 4.d.: 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