

DATE: May 24, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-00067

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Ray T. Blank Jr., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial indebtedness remains unpaid and he has not made a good faith effort to resolve his debts. Clearance is denied.

STATEMENT OF THE CASE

On August 23, 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 October 24, 2005, 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 December 19, 2005, consisting of thirteen documents, referred to as Items 1 through 13. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on January 3, 2006, and he submitted a reply dated March 14, 2006, consisting of eleven pages.

The case was assigned to the undersigned for resolution on March 28, 2006.

FINDINGS OF FACT

The following Findings of Fact are based on the Applicant's Answer to the SOR, the Government's thirteen exhibits and his reply to the FORM. The Applicant is 43 years old. He is employed by a defense contractor as a Facility Security Officer 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 admits the delinquent debts set forth in allegations, 1(a), 1(b), 1(e), 1(h) and 1(i) of the SOR. He denies the delinquent debts set forth in allegations 1(c), 1(d), 1(f) and 1(g). (*See Applicant's Answer to the SOR*). With respect to the debts that he denies, the Applicant states that he has either paid them in full, (1(c) and 1(d)), or he has never had an account with the creditor, (1(f), and 1(g)) or his attorney is currently researching the account and will be working toward resolving it (1(h) and 1(i)). (*See Applicant's Answer to SOR*). The Applicant has provided nothing to demonstrate that the collection accounts were not his legitimate debts. The Applicant explained that he has obtained legal representation to assist him with his debt negotiations and resolution. He has been in a credit restoration program for over the past year and a half to help restructure debt, monitor and identify critical financial gaps, and to create a plan to eliminate debt while recovering a positive net worth. (*See Government Exhibit 3*). He has also sought out assistance from a non-profit credit counseling agency. (*See Applicant's Reply to FORM*). The Applicant claims that through his investigation of his credit reports he has found discrepancies and incomplete or misreported information. (*See Applicant's Reply to FORM*). He has put together a chart that he believes is more accurate. His financial chart indicates that his debts have either been paid in full, the accounts have been closed, the student loans are in deferment, the account is a duplicate, or the account is current and is being paid. In reviewing his chart, it also indicates that he is substantially indebted, but that he is making monthly payments or working with the creditor to develop a payoff plan. In either case, the Applicant has substantial delinquent debt that has not paid.

The Applicant acknowledges that over the past several years, he has not been an "attentive steward of his credit" as he should have been, and has experienced financial difficulties. (*See Applicant's Post-Hearing Exhibit*). He attributes these difficulties to his transition from military service to the civilian world and because he has had to re-establish a household in one state while still making payments on a home in another state. Evidence in the record indicates that his financial problems began during his service in the Army from July 1988 to February 2000, complicated by child support payments he was required to make to several women who are mothers of his children. He states that he has now set up payment plans with his creditors and has consolidated some of his debts in order to get them paid. In his financial statement dated March 11, 2004, after paying his monthly bills, he has a net remainder of \$394.00 at the end of the month. (*See Government Exhibit 12*).

Credit reports of the Applicant indicate that he remains indebted to eight of the nine different creditors listed in the SOR totaling in excess of \$40,000.00. (*See Government Exhibits 5, 6, 7, 8 and 9*). The Applicant has submitted a letter from the creditor indicating that allegation 1(d) has been paid in full. (*See Applicant's Post-Hearing Exhibit*). There are also three letters from two credit card companies indicating that the Applicant has been making payments toward those debts. However, it is unclear from the record whether these credit card companies are listed in the SOR. (*See Applicant's Post-Hearing Exhibit*). There is no other evidence in the record that the Applicant has been paying any of the other creditors that are listed SOR, since at least May 20, 2005.

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 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). 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 \$40,000.00 in delinquent debt. He states that he has obtained an attorney, and has been actively involved in a credit restoration program. He claims that he has paid off some of his debts and is making monthly payments toward others. The Applicant's Post Hearing Exhibit includes three letters from creditors. One of the debts for \$300.00 has been paid in full. It is unclear from the record whether the three other letters address debts that are listed in the SOR. The letters do show that the Applicant is making payments toward those debts. Nevertheless, the Applicant has failed to submit any other documentation showing that he is doing anything to handle his financial problems listed in the SOR. There is absolutely nothing in the record except his self serving statements. There is no documentation from his attorneys or his credit restoration program. There are no receipts or other proof of payment. In fact, there is little evidence in the record 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 has a remainder at the end of the month and obviously can afford to pay some of his past due debts. However, there is insufficient evidence of financial rehabilitation. All but one of the debts listed in the SOR remain owing, and he remains heavily indebted. 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).

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.: For 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.

Subpara. 1.i.: 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