

DATE: August 28, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-00063

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial indebtedness has been mitigated by a good faith effort to resolve his indebtedness. However, with respect to his intentional falsifications on his security clearance application, they have not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On September 28, 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 on November 7, 2005, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on February 8, 2006. A notice of hearing was issued on February 27, 2006, scheduling the hearing for March 16, 2006. At the hearing the Government presented twelve exhibits. The Applicant presented no exhibits, but testified on his own behalf. The record was left open to allow the Applicant an opportunity to submit additional evidence. The Applicant submitted one Post-Hearing Exhibit, consisting of eleven pages. The official transcript (Tr.) was received on March 30, 2006.

FINDINGS OF FACT

The Applicant is 42 years old and married. He is employed as a Senior Network Infrastructure Engineer by a defense contractor 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 August 2004, the Applicant was single and irresponsible. He overextended himself financially and did not care much about paying his debts. Although he purchased a house in 1996, and kept up with the mortgage and homeowner maintenance expenses, he let his other bills go and they became delinquent. Credit Reports of the Applicant show that he accumulated twelve separate delinquent debts totaling about \$19,000.00. (See Government Exhibits 2, 3, 4, 5, 6, 7, 9 and 10). These delinquent debts are set forth in the SOR as 1(a) through 1(l).

In late 2003, early 2004, the Applicant decided to grow up and mature. In August 2004, he got married, and since then has been current with all of his monthly bills. He now has a young child with the hopes of another one soon, and realizes that he must be financially responsible.

As a matter of habit, in order to pay his bills, the Applicant would refinance his home and pull out the equity. He did this three or four times. One occasion, he refinanced his home and used \$20,000 to pay off all but two of his delinquent creditors. (Tr. p. 27). He claims that he has either paid off or settled each of the accounts set forth in the SOR. He is presently current on all of his monthly expenses. He explained that he recently purchased a new house and has been in the process of moving. As a result, he has not had time to unpack the paperwork that would document the fact that he has paid off these debts. (Tr. p. 27). The record was left open after the hearing in order to allow the Applicant to provide such documentation. The Applicant's Post-Hearing Exhibit contains proof that he has paid off or settled at least five delinquent accounts listed in the SOR, corroborating his testimony.

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 dated May 22, 2003. Question 37 of the application asked him if in the last seven years had he had a judgement against him that had not been paid. The Applicant answered "NO". (See Government Exhibit 1). This was a false answer. The Applicant explained that he was told by his company security officer only to go back seven years. The Applicant believed that the judgment against him had been entered over seven years ago. (See Tr. p. 43)

Question 38 of the same application asked the Applicant if in the last seven years has he been over 180 days delinquent on any debts? The Applicant answered "NO". (See Government Exhibit 1). This was a false answer. The Applicant was 180 days or more delinquent on those debts set forth above in paragraph 1 of the SOR. (See Government Exhibits 2, 3, 4, 5, 6, 7, 9 and 10). The Applicant stated that he did not realize that he was that far behind on his debts. It was not until later that it became apparent to him that he was. (Tr. p. 43).

Question 39 asked the Applicant if he was currently over 90 days delinquent on any debts. The Applicant answered "NO". This was a false answer. The Applicant was 90 days or more delinquent on those debts set forth in paragraph 1 of the SOR. (See Government Exhibit 1). The Applicant testified that he misread the question. He thought that it referred only to recurring monthly debt. (Tr. P. 44). The Applicant further explained that in response to questions 37, 38 and 39 he did not intentionally attempt to falsify any of the information.

I find that the Applicant intentionally sought to conceal the truth in response to questions 37, 38 and 39 of his security clearance application dated May 22, 2003. The Applicant knew or should have known that he had financial delinquencies. The questions are not difficult. The Applicant spent the past four years repeatedly refinancing his house because of his excessive delinquent debt.

Despite this, he did not reveal any of his indebtedness to the Government on his security clearance application. It is possible that he did not know who or how much he owed, but he certainly knew that he had outstanding debts. He failed to reveal even this. There is no excuse for this conduct. He was not candid, honest or truthful with the Government on the security clearance application. I find that the Applicant falsified his security clearance application in response to these questions.

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.

Condition that could mitigate security concerns include:

6. The individual initiated a good faith effort to repay overdue creditors or other wise resolve debts.

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.

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 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 in the past (Guideline F), and that he has falsified 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 admits that he overextended himself and acquired delinquent debts. Since he got married, he has refinanced his home and used the money to pay all but two of his smaller debts. He intends to pay the two small debts as soon as possible. Under Guideline F, mitigating Condition (6) *The individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts* applies. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

Turning to the Applicant's responses to questions 37, 38 and 39 on the security clearance application, I cannot find an acceptable excuse for his conduct if it was not intentional. He knew or should have known that he had delinquent debts and that he must reveal the truth to the Government on the questionnaire regardless of the outcome. The Government relies heavily upon the integrity and honesty of clearance holders. It is a negative factor for security clearance purposes when an Applicant has deliberately provided false information about material aspects of his personal background. The evidence here, proves that the Applicant has not been completely honest with the Government regarding his delinquent debts and his civil judgment, and it is inexcusable for the Applicant to intentionally provide false information to the Government on his security clearance application. I find that the Applicant deliberately failed to reveal this information to the Government. None of the mitigation factors set forth in the Directive under Guideline E apply. This Applicant has not demonstrated that he is trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline E (Personal Conduct).

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 2 of the Government's Statement of Reasons. As discussed above, Paragraph 1 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: For the Applicant.

Subpara. 1.a.: For the Applicant.

Subpara.1 .b.: For the Applicant.

Subpara.1 .c.: For the Applicant.

Subpara.1 .d.: For the Applicant.

Subpara. 1.e.: For the Applicant.

Subpara. 1.f.: For the Applicant.

Subpara.1 .g.: For the Applicant.

Subpara.1 .h.: For the Applicant.

Subpara.1 .i.: For the Applicant.

Subpara.1 .j.: For the Applicant.

Subpara.1 .k.: For the Applicant.

Subpara.1.1.: For 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.

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