

DATE: October 31, 2005

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-01639

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Candance Le'i, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial indebtedness remains delinquent 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, USC 1001, a felony and have not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On April 21, 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 May 5, 2005, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on July 21, 2005. A notice of hearing was issued on August 24, 2005, scheduling the hearing for September 8, 2005. At the hearing the Government presented seven exhibits. The Applicant presented no exhibits, but he testified on his own behalf. The official transcript (Tr.) was received on September 20, 2005.

FINDINGS OF FACT

The following Findings of Fact are based on the Applicant's Answer to the SOR, the Applicant's testimony and the Government's seven exhibits. The Applicant is 41 years old. He is employed by a defense contractor as a Security Guard 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 allegation 1(a). He denies all of the other delinquent debts set forth in 1(b) through 1(m) of the SOR. (*See Applicant's Answer to the SOR*). With respect to the debts that he denies, the Applicant admits that they were debts that either he or his wife incurred, but that he is no longer responsible to pay them because the statute of limitations has run.

In 1994, the Applicant filed for Chapter 7 bankruptcy relief. At that time all of his debts were discharged. Three years later, in 1997, he married his wife and began to incur more debt, so much that he could not afford to pay it.

In 1998, after his wife suffered a personal injury accident, the Applicant's wife filed for bankruptcy under Chapter 13, a reorganization plan. This plan was converted to Chapter 7 bankruptcy in 2002, and the debts listed were discharged. The Applicant's debts were not listed in his wife's Chapter 7 bankruptcy petition and were not discharged. The Applicant realizes that these debts are due and owing, however, he cannot afford to pay these delinquent debts based upon his current income.

The Applicant attributes a lot of his financial problems over the years to stupid decisions he made concerning how he managed his money. For example, instead of paying off his bills when he had the money to do so, he allowed his wife to convince him to spend it on unnecessary items he could not afford. He signed up for promotional offers, such as cell phones. He also purchased jewelry for his wife and a time share that he could not afford.. The Applicant testified that he and his wife are currently separated and in the process of a divorce.

In his sworn statement to the Defense Investigative Service dated February 27, 2004, the Applicant stated that he was going to file for bankruptcy protection within the next month. (*See Government Exhibit 3*). He failed to do so. The Applicant testified that he is presently filling out paperwork with his attorney to file for Chapter 7 bankruptcy relief that will most probably occur within the next six months. The only outstanding debt that he plans to reaffirm is his truck payment.

Credit reports of the Applicant indicate that he is indebted to at least twelve different creditors totaling an approximate amount of \$18,000.00. (*See Government Exhibits 3, 4, 5 and 6*). Each of the debts remains outstanding and delinquent. There is no evidence in the record that the Applicant has been paying any of his creditors. He testified that he has recently been in contact with several of his past due creditors to discuss settlement.

The Applicant testified, "I take full responsibility for the - - for all these debts because I should have known better and I should have been maybe a stronger individual. That's all I can say." (Tr. p. 39).

Paragraph 3 (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 June 20, 2003. Question 22 of the application asked the Applicant if in the last seven years he had ever been fired from a job, quit a job after being told you'd be fired, left a job by mutual agreement following allegations of misconduct, left a job by mutual agreement following allegation of unsatisfactory performance. The Applicant answered, "NO." (*See Government Exhibit 1*). This was a false answer. The Applicant failed to disclose that he was terminated by his employer in 2003 for sleeping on the job. (*See Tr. pp 29-30*). The Applicant testified that he presumed the information was not important and just did not list it. (Tr. pp. 35-37).

The same questionnaire, at question 28(a), asked the Applicant if he has 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 his delinquent debts set forth in the SOR. (*See Government Exhibits 4, 5 and 6*).

The same questionnaire, question 28(b) asked the Applicant if he was currently over 90 days delinquent on any debts.

The Applicant answered, "NO." (See Government Exhibit 1). This was a false answer. The Applicant failed to list his past due debts set forth in the SOR. The Applicant explained that he did not have his credit report available at the time to determine what delinquent debts he had. (Tr. pp 36-37).

I find that the Applicant knew or should have known to reveal the truth about his job termination in 2003 and his history of delinquent debts. The fact that he did not indicates that he was simply not being truthful at the time he completed the security clearance application. He did not take the process of filing out the application seriously and it obviously shows. Accordingly, I find that the Applicant deliberately attempted to conceal this information from the Government on his 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's deliberate falsifications on his security clearance application, discussed above, are a violation of Title 18 of the United States Code, Section 1001, a felony.

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.

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 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); in violation of a 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. In 1994, the Applicant filed for Chapter 7 bankruptcy relief, and discharged his delinquent debts. In 1998, his wife filed for a Chapter 13 reorganization plan that was converted to a Chapter 7 in 2002, and her debts were discharged. The Applicant now plans to file for Bankruptcy to discharge his remaining debts. There is no evidence in the record to show that the Applicant has learned how to properly manage his financial affairs without acquiring indebtedness. With respect to his finances, the Applicant has in excess of \$18,000.00 in delinquent debt. 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 may have a small remainder at the end of the month and obviously cannot afford to pay his past due debts. There is no evidence of financial rehabilitation. All of the debts 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).

With respect to Guidelines E and J, the Applicant has presented no reasonable excuse as to why he did not reveal his job termination and delinquent financial history in response to questions 22 and 28(a) and 28(b) 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 employment and 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 and that he violated a Title 18, United States Code, Section 1001, a felony. Accordingly, I find against the Applicant under Guidelines E and J.

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, 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.

Subpara. 1.i.: Against the Applicant.

Subpara. 1.j.: Against the Applicant.

Subpara. 1.k.: Against the Applicant.

Subpara. 1.l.: Against the Applicant.

Subpara. 1.m.: 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