

DATE: November 14, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-02127

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's financial situation was primarily caused by circumstances beyond his control (e.g., period of unemployment, unexpected medical emergency and separation). He has resolved it by filing a Chapter 7 bankruptcy and receiving a discharge. The Applicant is not delinquent on his current debts. He did not falsify his security clearance application as alleged. Clearance is granted.

STATEMENT OF THE CASE

On November 7, 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 December 21, 2005, and requested a hearing. The case was transferred to the undersigned on July 6, 2006, and a Notice of Hearing was issued on July 10, 2006.

A hearing was held on July 25, 2006, at which the Government presented five documentary exhibits. Testimony was taken from the Applicant, who also submitted two hearing exhibits (Applicant's Exhibits A and B) and two post-hearing exhibits (Applicant's Exhibits C and D). The transcript was received on August 4, 2006.

FINDINGS OF FACT

The Applicant is 37 and separated from his wife. He is employed by a defense contractor and he seeks to obtain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a 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 generate funds.

The Applicant works as a long-haul trucker. He currently lives and works in State A. His family, including his wife and children, live in State B. Due to the nature of his work, he had to rely on his wife to pay the bills. During the period from 2001 through 2003 the Applicant's wife consistently failed to pay the family bills in a timely fashion. Several times during this period the utilities were cut off at the Applicant's home in State B. The debts set forth in allegations 1.a., 1.b., and 1.c. were incurred during this period.

The Applicant left his employment in State B in January 2003. He had four months of unemployment before he began to work for his current employer in State A in May 2003. (Transcript at 28.) That is also the time that he and his wife became separated. He provides support to his children.

The Applicant suffered a heart attack on September 12, 2003. He had no medical insurance at that time. Because of his heart problems, he incurred the debts set forth in SOR allegations 1.d. and 1.e.

The Appellant and his wife, even though separated, decided to file for Chapter 7 bankruptcy in August 2005. (Government Exhibit 5 at 3.) This decision was made for three reasons. First, the Applicant incurred considerable uninsured medical expenses because of his heart attack. Second, his wife's continuing inability to control her own spending and pay off her debts, including her student loans. Third, the Applicant's period of unemployment in 2003.

The petition for bankruptcy was filed on November 16, 2005. It listed assets of \$23,236.00 and liabilities of \$196,928.26. (Applicant's Exhibit A at 3, 11.) The medical expenses connected to the Applicant's heart attack totaled \$82,379.97. The Applicant's wife is the primary debtor for an additional \$64,466.18 in student loans. (Applicant's Exhibit A at Schedule F.) The Applicant received a discharge in bankruptcy on February 15, 2006. (Applicant's Exhibit D.)

The Applicant is not currently delinquent on any of his debts. His wife is delinquent on the student loans she took out, for which he is partially responsible. (Transcript at 71-72.) Because of the Applicant's job as a trucker, he does not earn a regular salary but is paid by the mile. He will work straight for three or four months, then take time to visit his family in State A. He saves his money while working, paying his and his wife's debts as he goes. Then, he will take his month off before returning to work in State B. Because of the physical distance between the two states, it would be impossible for him to go home for a weekend on a regular basis.

Paragraph 2 (Guideline E - Personal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

On June 25, 2003, the Applicant completed an official DoD questionnaire in which he stated that he had not been 180 days delinquent on any debts within the last seven years and that he was not currently 90 days delinquent on any debts. (Government Exhibit 1, questions 38 and 39.) For the following reasons I find that the Applicant did not falsify his security clearance application concerning these two questions.

The Applicant had been 180 days delinquent on three debts within the seven years before the questionnaire was signed. (SOR allegations 1.a., 1.b. and 1.c.) The Applicant realized this and informed his security officer that he was indebted but did not know the creditors or amounts. The security officer submitted a statement saying that she instructed the Applicant to put the following statement in question 43 "General Remarks," "Mod 38 - Various utilities and credit cards. Unsure of amounts and dates." That statement is contained in the Applicant's hand written worksheet and the electronic application submitted by his employer. (Government Exhibit 1 and Applicant's Exhibits B and C.)

The Applicant was not 90 days delinquent as of June 25, 2003, on the debts set forth in SOR allegations 1.d. and 1.e. Those two debts are for the Applicant's medical care after his heart attack on September 12, 2003. The credit reports submitted by the Government confirm that these two debts post-date his questionnaire. (Government Exhibits 2, 3 and 4)

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 be involved in acts of financial irresponsibility and falsification that demonstrates 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 granting 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 had delinquent debts (Guideline F). Accordingly, Disqualifying Condition E2.A6.1.2.1. applies, "*A history of not meeting financial obligations.*"

The Applicant, on the other hand, has successfully mitigated the Government's case. The evidence shows that the Applicant's credit problems had three primary sources. Those are his health, his wife's lack of financial management skills (which have lead to their separation), and a period of unemployment. Accordingly, Mitigating Condition E2.A6.1.3.3. applies, "*The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, . . . unexpected medical emergency, . . . or separation).*"

In this case, given the situation with his wife and the amount of his medical bills, the Applicant could see no reasonable alternative other than to file bankruptcy and discharge his dischargeable debts. Under the facts of this case, I find that Mitigating Condition E2.A6.1.3.6. also applies, "*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*"

The Applicant has used good sense in resolving his debt situation the way he has. I have specifically considered the fact that the bankruptcy was not filed until November 2005. This fact is not held against the Applicant because his marital difficulties, the nature of his job, and the geographical distance between his home (State A) and where he works (State B), made it difficult to arrange all of the paperwork.

As stated above, the Applicant did not falsify his security clearance application as set forth in paragraph 2. Guideline E and its subparagraphs are found for the Applicant.

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 Paragraphs 1 and 2 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.

Subparagraphs 1.a. through 1.e.: For the Applicant.

Paragraph 2: For the Applicant.

Subparagraphs 2.a. through 2.b.: 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