

DATE: June 27, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-02824

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's delinquent financial indebtedness has not been resolved. Her omissions on her security clearance application were not intentional. Clearance is denied.

STATEMENT OF THE CASE

On September 27, 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 10, 2005, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 30, 2005. A notice of hearing was issued on February 7, 2006, scheduling the hearing for February 28, 2006. At the hearing the Government presented nine exhibits. The Applicant presented no exhibits but testified on her own behalf. The record was left open for three weeks after the hearing, until the close of business on March 24, 2006, to give the Applicant an opportunity to submit supporting documentation. The Applicant failed to submit additional information. The official transcript (Tr.) was received on March 13, 2006.

FINDINGS OF FACT

The Applicant is 61 years old, and did not complete high school. She has completed an occupational program for home health care nursing and has received a certificate of completion. She is employed by a defense contractor as a Security Officer and is seeking to obtain her security clearance in connection with her 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 she is financially overextended and at risk to engage in illegal acts to generate funds.

The Applicant has been employed with her current employer for more than ten years. She first received a security clearance in 1982/83.

The Applicant's financial problems began as a result of her generous spirit to help her children. The Applicant has five adult children. She co-signed for a vehicle for one of her sons, who ultimately could not make the payments and it was repossessed. In 2000, the creditor began garnishing her wages to pay the deficiency amount owed on the car. The Applicant also co-signed for an apartment for her daughter. At some point, her daughter broke the lease and moved out owing money. These creditors started coming after the Applicant for payment. Since 2000, when her wages were garnished for her son's repossessed vehicle, she has been unable to pay her own bills. She began robbing Peter to pay Paul and some of her personal accounts became delinquent. Bill collectors began calling and she decided not to answer the telephone as to not stress herself out.

The SOR alleges that the Applicant owes sixteen separate creditors totaling an amount in excess of \$30,000.00. The Applicant testified that she has not paid any of the delinquent debts set forth in the SOR. (Tr. p. 46). She admits that she owes several department stores and a bill for a cellular telephone but is uncertain as to the exact amount she owes. (Tr. pp. 39-41). Credit Reports of the Applicant reflect each of the debts listed in the SOR and indicate that each of them remains out standing. (See Government Exhibits 3,8 and 9). The Applicant claims that she has no knowledge of many of the debts listed in the SOR. She admits that she is just now starting to get back on her feet and plans to pay all of the delinquent debts that are her own. (Tr. p. 45).

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because she intentionally falsified material aspects of her personal background during the clearance screening process.

The Applicant completed a security clearance application dated May 20, 2002, that was electronically transmitted on June 6, 2002. Question 28 (a), of the application asked her if in the last seven years, have you been over 180 days delinquent on any debts. The Applicant answered "NO." Question 28(b), of the same application, asked her if she was currently over 90 days delinquent on any debts. Again, the Applicant answered, "NO." (See Government Exhibits 1 and 2). These were not accurate responses. The Applicant failed to disclose that she has a number of delinquent debts as set forth in SOR allegations 1(a), through 1(f). The Applicant explained that she completed this paperwork while at work and obviously did not pay careful attention to the questions. (Tr. p. 48).

I find that the Applicant did not intentionally falsify her security clearance application. She credibly testified that she did not pay proper attention to the application and answered the questions incorrectly. Furthermore, she still had no knowledge of many of the debts when asked about them at the hearing. She was simply careless, but not deceitful. Accordingly, I find that the Applicant did not deliberately fail to list her delinquent financial history on her security clearance application. Accordingly, I find that the Applicant did not deliberately attempt to conceal this information from the Government.

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 E (Personal Conduct)

Condition that could raise a security concern:

None.

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 or 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 her 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 her 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 her finances, the Applicant has not made any attempt to pay any of her creditors. She is obviously a nice person, and has tried to be a good mother to her children, but her debts remain outstanding and delinquent. She has made no good faith effort to resolve her indebtedness. There is no evidence of financial rehabilitation. Furthermore, the Applicant has not demonstrated that she can properly handle her 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. Her 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 her overdue creditors or otherwise resolve her debts (MC) 3. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

With respect to Guideline E, (Personal Conduct), the Applicant did not intentionally falsify her security clearance application to the government about the extent of her delinquent financial history. The Applicant honestly testified that simply did not pay the application the proper attention she should have. Furthermore, as was evident as the hearing, she honestly does not know how much she owes many of her creditors, and she has no knowledge of others. She answered the questions on the application and did not answer them correctly, but did not intend to deceive the Government when she did. Consequently, the evidence shows that the Applicant did not deliberately conceal the truth from the Government on the security clearance application. Accordingly Guideline E is found for the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing her 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 Government's Statement of Reasons. Paragraph 2 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.

Subpara. 1a.: Against the Applicant.

Subpara. 1 b: Against the Applicant.

Subpara. 1 c: Against the Applicant.

Subpara. 1d: Against the Applicant.

Subpara. 1e: Against the Applicant.

Subpara. 1f: Against the Applicant.

Subpara. 1g: Against the Applicant.

Subpara. 1h: Against the Applicant.

Subpara. 1 i: Against the Applicant.

Subpara. 1.j: Against the Applicant.

Subpara. 1k: Against the Applicant.

Subpara. 1.l: Against the Applicant.

Subpara. 1.m.: Against the Applicant.

Subpara. 1.n: Against the Applicant.

Subpara. 1.o: Against the Applicant.

Subpara. 1.p: Against the Applicant.

Paragraph 2 For the Applicant.

Subpara. 2.a.: For the Applicant.

Subpara. 2.b.: For 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