

DATE: November 22, 1999

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 99-0503

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY-ANDERSON

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On July 30, 1999, 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, 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 August 11, 1999, 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 September 27, 1999. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on October 5, 1999, and he submitted no response.

The case was transferred to the undersigned for resolution on November 5, 1999.

FINDINGS OF FACT

The Applicant is 36 years old, and is employed by a defense contractor. He is applying for a 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 criterion 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 has admitted to a variety of delinquent debts. (See, Applicant's Answer to SOR).

Subparagraph 1(a) In 1991, the Applicant filed for Chapter 13 Bankruptcy and later changed it to Chapter 7 at the advise of his attorney. The Applicant discharged approximately \$23,450 in past due indebtedness. (See, Government Exhibits 5 and 6).

Subparagraph 1(b) The Applicant was indebted to a State's child support enforcement division in the amount of \$10,614.85. As of October 1998, this account remained outstanding. The Applicant states that the amount of the debt listed is wrong, and that he has now paid off the debt. (See, Applicant's attachment to Answer to SOR concerning child support).

Subparagraph 1(c) The Applicant was indebted to a utility service in the amount of \$301.26 for a debt on an account that was closed in September 1992. As of October 1998, this account remained outstanding. The Applicant states that his soon to be ex-wife continued to use the account after their separation. He intends to pay the amount owed.

Subparagraph 1(d) The Applicant was indebted to a telephone company in the amount of \$565.92 for a balance owed on an account that was closed in September 1992, and turned over to collection in 1993. As of October 1998, this account remained outstanding. The Applicant states that his soon to be ex-wife continued to use the account after their separation. He intends to pay the amount owed.

Subparagraph 1(e) The Applicant was indebted to a creditor in the amount of \$16,639.21 for a balance owed on a student loan account that was opened in 1991 and turned over to collection in June 1996. As of October 1998, this account remained outstanding. The Applicant states that he owes approximately \$3,000.00 less than stated, and that he has consistently made payments on the account. He intends to pay the amount owed.

Subparagraph 1(f) The Applicant was indebted to a creditor in the amount of \$147.00 for a judgment entered against him in October 1996. As of October 1998, this account remained outstanding. The Applicant states that he was not aware of the debt until his security clearance investigation. He intends to pay the amount owed.

Subparagraph 1(g) The Applicant was indebted to a creditor in the amount of \$785.00 for a balance owed on an account that was turned over for collection in October 1996. As of January 1999, this account remained outstanding. The Applicant states that he was not aware of the debt until his security clearance investigation. He intends to pay the amount owed.

Subparagraph 1(h) The Applicant was indebted to a creditor in the amount of \$524.00 for a balance owed on an account that was turned over for collection in October 1996. As of January 1999, this account remained outstanding. The Applicant states that he was not aware of the debt until his security clearance investigation. He intends to pay the amount owed.

Subparagraph 1(i) The Applicant was indebted to a creditor in the amount of \$55.20 for a balance owed on two accounts which were turned over to collection in October 1996. As of January 1999, these accounts remained outstanding. The Applicant states that the debt was incurred by his soon to be ex-wife without his knowledge and consent. He intends to pay the amount owed.

Subparagraph 1(j) The Applicant was indebted to a creditor in the amount of \$132.00 for a judgment entered against him in December 1996. As of October 1998, this account remained outstanding. The Applicant states that the debt was incurred by his soon to be ex-wife without his knowledge and consent. He intends to pay the amount owed.

Subparagraph 1(k) The Applicant was indebted to a telephone service in the amount of \$1,265.39 for the balance owed on a long distance service account which was turned over for collection in September 1997. As of October 1998, this account remained outstanding. The Applicant states that the debt was incurred by his soon to be ex-wife without his knowledge and consent. He intends to pay the amount owed.

Subparagraph 1(l) The Applicant was indebted to a creditor in the amount of \$4,160.60 for a balance owed on an account which was turned over for collection in September 1997. As of January 1999, this account remained outstanding. The Applicant states that he was not aware of the debt until his security clearance investigation. He intends

to pay the amount owed.

Subparagraph 1(m) The Applicant was indebted to a medical clinic in the amount of \$45.50 for a balance owed on a patient service account which was opened in December 1997, and subsequently turned over to collection. As of January 1999, this account remained outstanding. The Applicant states that he was not aware of the debt until his security clearance investigation. He intends to pay the amount owed.

Subparagraph 1(n) The Applicant was indebted to a creditor in the amount of \$318.12 for a balance owed on a purchase contract account opened in January 1995 and turned over to collection in August 1998. As of October 1998, this account remained outstanding. The Applicant denies the debt as it was incurred by his ex-wife without his knowledge and consent. He intends to pay the amount owed.

Subparagraph 1(o) The Applicant's personal financial statement of September 30, 1998, indicates that his monthly expenses exceed his monthly income which does not include repayment of the delinquent debts set forth in subparagraphs 1(a) through 1(n), except 1(b). (See, Government Exhibit 6). The Applicant states that he recently received a promotion with his company, and his income now comfortably exceeds his expenses which will allow him to pay off his outstanding debts.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on own common sense. 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 are:

Guideline F (Financial Considerations)

Conditions that could raise a security concern:

1. A history of not meeting financial obligations;
3. an inability or unwillingness to satisfy debts.

Condition that could mitigate security concerns include:

None.

In addition, as set forth in Enclosure 2 of the Directive at page 2-1, "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.

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 criminal conduct, which demonstrates poor judgment, untrustworthiness or unreliability.

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. All 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 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 continued 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 or her a security clearance.

In this case the Government has met its initial burden of proving by evidence that the Applicant has been financially irresponsible (Guideline F). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case.

The record evidence establishes that the Applicant has engaged in a pattern and history of financial irresponsibility. Following his bankruptcy in 1991, the Applicant has continued to have difficulties meeting his financial obligations. Although he has made some effort, indicated by the fact that he has paid off his back child support, he remains indebted in the approximate amount of \$24,000.00, for past due indebtedness, that includes numerous collection accounts and two court judgments. For many years, he has simply ignored his debts, and made no effort to pay them. Despite his good intentions to pay them now, there is no convincing evidence that he will.

The Applicant has also failed to respond to the File of Relevant Material, which leaves the record silent on the issue of rehabilitation. Although the Applicant shows some sensitivity to his past financial behavior, it is not clear that the

Applicant has gained the necessary insight into the seriousness of his conduct, or whether he is prepared to act responsibly in the future. He continues to owe a large amount of money to his past due creditors. I cannot say that he is unlikely to repeat his irresponsible conduct. I find that the Applicant's financial irresponsibility was not isolated, is recent, and continuing, and could recur in the future. Accordingly, Guideline F, is found against the Applicant.

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.: For 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.

Subpara. 1.o.: Against the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

DARLENE LOKEY-ANDERSON

Administrative Judge