

DATE: February 22, 2000

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 99-0566

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY-ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Department Counsel

**FOR APPLICANT**

*Pro Se*

**STATEMENT OF THE CASE**

On September 29, 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 October 22, 1999, in which he elected to have the case determined on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on December 23, 1999. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on December 30, 1999, and he submitted no response.

The case was assigned to the undersigned for resolution on February 1, 2000.

**FINDINGS OF FACT**

The Applicant is 35 years old, married, 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.

In 1988, the Applicant, who supports four children and a wife, became unemployed and filed for welfare. When he

obtained employment as a tow truck driver, he did not make enough money to support his family, so he decided to continue to collecting welfare benefits. The Applicant knew that he should report his employment to the welfare department, and intended to report it when his financial situation improved. Before he reported that he was employed, the State found out that he was working, and they garnished his wages for the amount of welfare he received after he started working. The State also charged him and his wife with Welfare Fraud. The court dismissed the felony charge; but, the Applicant was ordered to pay restitution in the amount of \$2,000.00. The Applicant arranged to pay \$50.00 a month.

In early 1996, the Applicant injured his back on the job, and was out of work for about a year and a half. During this period, he fell behind on his rent and other bills.

Subparagraph 1(a) In July 1997, the Applicant filed a Chapter 7 Bankruptcy petition and in October 1997, his unsecured debts of \$45,760.00 were discharged. (See, Government Exhibit 9). The Applicant was unable to include his debt for welfare fraud restitution in his bankruptcy petition as that debt is legally prohibited from discharge.

Subparagraph 1(b) The Applicant's indebtedness to the State arising from the welfare fraud which was originally \$2,000.00 increased over time as penalties and interest accrued, and eventually reached the sum of \$7,551.00. As of January 28, 1999, this account remained outstanding. The Applicant states that during his period of unemployment in 1996-1997, he fell behind on his payments to the State, but since he became employed in June 1998, he had been making the regular monthly payments of \$50.00 a month and his account is current. As of October 1999, the balance owed on the account was approximately \$4,000.00. (See, Government Exhibit 3).

Subparagraph 1(c) The Applicant was indebted to a State department in the amount of \$61.00 for the balance owed on an account based on an overpayment made to his family in September 1997. The Government alleges that as of January 27, 1999, this debt was still outstanding. The Applicant states that he has paid this debt and it is no longer owing. (See, Government Exhibit 3).

Subparagraph 1(d) The Applicant's financial statement of December 8, 1998, indicates that he has a monthly net remainder of about \$133.00 after deducting his monthly expenses and debt payments. (See, Government Exhibit 6). The Applicant's payment to the State in the amount of \$50.00 is not reflected in his financial statement.

The Applicant states that he has been current on all of his bills since filing Bankruptcy in 1997. His credit report reflects that all of his accounts opened after 1997 are being paid as agreed, including his debt to the State for restitution. (See, Government Exhibit 7).

Paragraph 2 (Criterion E- Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in conduct involving questionable judgment, unreliability, or unwillingness to comply with rules and regulations.

From November 1989 to December 1991, the Applicant failed to report income that he received from employment during the same period he was also receiving welfare benefits and food stamps. The Applicant repaid \$1, 287.00 for welfare benefits, and \$567.00 for food stamps.

## 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;
  - Deceptive or illegal financial practices . . . ;
3. An inability or unwillingness to satisfy debts.

Conditions that could mitigate security concerns include:

- The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation);

Guideline E (Personal Conduct)Condition that could raise a security concern:

- A pattern of dishonesty or rule violations.

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 guidelines established in the DOD Directive identify personal characteristics and conduct that 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 predicated 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 a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence that 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, and personal conduct, which demonstrate 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 or 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), and has engaged in dishonest personal conduct (Guideline E). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant.

Considering all of the evidence, however, 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 due to a period of unemployment in 1988, and again in 1996-1997, the Applicant became indebted to his creditors, and was unable to support his family. Since then, the Applicant has taken positive legal steps to resolve his past due indebtedness. In 1997, he filed for Chapter 7 Bankruptcy and discharged \$45,760.00. Although he has not yet paid off his restitution to the State for welfare fraud, he has continued to make regular monthly payments to the State, and intends to continue paying this debt, until it is paid in full. He is current on all of his other financial obligations. The Applicant has demonstrated a good faith effort to resolve his financial indebtedness. Accordingly, Guideline F is found for the Applicant.

On the other hand, by receiving welfare benefits and food stamps that he was not legally entitled to, the Applicant showed poor judgment and unacceptable personal conduct. In 1988, he filed for welfare benefits, and, at times during the period between November 1989 until November 1992, he received benefits even after he became employed. The Applicant committed fraud against the State by not reporting his employment. Although this fraud occurred almost eight years ago, it is a serious showing of dishonesty, and not an attribute of an individual to whom the Government would trust with its secrets.

The Applicant has also failed to respond to the File of Relevant Material, which leaves the record silent on the issue of rehabilitation. The Applicant has offered no independent evidence from people who know him well, such as family, friends, coworkers, or supervisors that could attest to his trustworthiness. It is not clear from the evidence that the Applicant has gained the necessary insight into the seriousness of his conduct, or whether he is prepared to follow the rules, and act responsibly in the future. Consequently, I cannot conclude that he is now a reliable and trustworthy individual. Accordingly, Guideline E, 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 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.

Subpara. 1.a.: For the Applicant.

Subpara. 1.b.: For the Applicant.

Subpara. 1.c.: For the Applicant.

Subpara. 1.d.: For the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.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 interests of national security to grant or continue a security clearance for the Applicant.

DARLENE LOKEY-ANDERSON

Administrative Judge