

DATE: October 13, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-11564

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire

Department Counsel

FOR APPLICANT

Alan R. Johns, Esquire

SYNOPSIS

The Applicant has only begun the process of paying over \$24,000.00 in past due debt. Her conduct does not show sufficient mitigation of the allegations against her. Adverse inference is not overcome. Clearance is denied.

STATEMENT OF THE CASE

On March 28, 2006, 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 April 21, 2006, and requested a hearing. The case was received by the undersigned on June 9, 2006, and a Notice of Hearing was issued on June 23, 2006.

A hearing was held on July 11, 2006, at which the Government presented six documentary exhibits. Testimony was taken from the Applicant, who also submitted six hearing exhibits and one post-hearing exhibit. The transcript was received on July 25, 2006.

FINDINGS OF FACT

The Applicant is 38, married and has an Associate of Science degree. She is employed by a defense contractor, and she seeks to obtain a DoD security clearance in connection with her 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 she is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. The Applicant admitted subparagraphs 1.a. through 1.i. in the SOR. Those admissions are hereby deemed findings of fact.

The Applicant attended culinary school in 1998 and 1999 and received a degree. She expected that the attendance at the school would assist her in obtaining higher paid jobs in her profession as a cook. According to the Applicant, only when she obtained her most recent job did she get promoted and begin to be paid in a manner commensurate with her abilities. Until early 2006, the Applicant did not pay any of the past due debts set forth in the SOR.

Once she received the SOR, the Applicant realized the importance of paying off her past due debts. In April 2006 she consulted with her local Consumer Credit Counseling Service (Service). They approved a budget for her and the Applicant filed the documents allowing the Service to deduct money directly from her checking account beginning in May 2006. (Applicant's Exhibits A, B, C and G at 7.) The Service made the first payments to the Applicant's creditors in June 2006. (Applicant's Exhibit E.)

At the time of the hearing the Applicant owed \$24,380.72 to the same five creditors set forth in the SOR. Based on the Service records (Applicant's Exhibit E) the current payment situation regarding the specific creditors set forth in the SOR is as follows:

1.a. and 1.b. The Applicant currently owes this collection agency \$840.92.

1.c. The Applicant currently owes this automobile financing company \$3,821.80.

1.d. through 1.g. The Applicant currently owes the State Student Assistance Association \$18,993.00 on four consolidated student loans.

1.h. The Applicant currently owes \$99.00 on a past due medical claim.

1.i. The Applicant has been unable to contact this creditor. This account is past due in the amount of \$626.00. (Applicant's Exhibits D and G at 4-5.)

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 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 has a history of not being able to pay her just debts in a timely fashion (Guideline F). The Applicant has not mitigated the Government's case.

The Applicant has known about all of the debts in the SOR for several years. She did not even begin the process of paying them until after she received the SOR. The Applicant has signed up with the Service, and begun to pay off the debts. However, the fact remains that she is in the very early stages of paying off over \$24,000.00 in debt. She has virtually no track record of paying off her past due indebtedness and maintaining her current payments. Based on all of the evidence available to me, I cannot find that the Applicant has sufficiently mitigated the allegations of this paragraph. If the Applicant continues to pay her debts in a timely fashion, she may be eligible for a clearance in the future. She is not eligible now.

Disqualifying Conditions E2.A6.1.2.1. (*A history of not meeting financial obligations*) and E2.A6.1.2.3. (*Inability or*

unwillingness to satisfy debts) apply to the facts of this case. None of the Mitigating Conditions apply. Paragraph 1 is found against 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.

Subparagraphs :1.a. through 1.i.: 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.

Wilford H. Ross

Administrative Judge