

DATE: December 29, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-05227

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Caroline H. Jeffreys, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's financial indebtedness has not been resolved. Clearance is denied.

**STATEMENT OF THE CASE**

On June 9, 2006, 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 a date uncertain, 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 August 23, 2006, consisting of eight Government Exhibits referred to in the record as Government Exhibits 1 through 8. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on September 13, 2006, and he submitted a one page reply that was undated. The case was transferred to the undersigned for decision on November 9, 2006.

The Government filed a Motion to Amend the SOR to remove allegation 1(d), in its entirety, and to remove 1(e), and replace it with the following: "You are indebted to Fleet in the approximate amount of \$4,591.00, for an account placed for collection in about July 2002. As of April 27, 2006, this debt had not been satisfied." This motion changes the figure from \$4, 951.00 to \$4,591.00. The Applicant filed no objection to the amendments. The Government's Motion to Amend the SOR is granted in part, and denied, in part. The Government's motion to delete allegation 1(d), is denied. The Government's motion to remove 1(e), and replace it with the language set forth above, is granted.

**FINDINGS OF FACT**

The Applicant is 57 years old. He is employed by a defense contractor as a Dispatcher. 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 guideline 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 of having to engage in illegal acts to generate funds.

The Applicant is indebted to at least seven creditors as set forth in the SOR. He admits the debts set forth in allegations 1.(b)., 1.(c)., 1.(f)., and 1.(g)., and denies the others. In his answer to interrogatories dated April 27, 2006, the Applicant indicated that the debts listed in the SOR do not appear on his most recent credit report. However, he did not provide a copy of this credit report or any documentary evidence to support this statement. The Applicant attributes his financial indebtedness to his wife being laid off from work that caused marital problems and eventually a separation. He was left with the debt. The Applicant submitted no documentary evidence concerning this situation.

The Government submitted two credit reports of the Applicant, dated December 2004, and March 2006, respectively. Both credit reports reflect that each of the seven debts listed in the SOR remain delinquent. (Government Exhibits 7 and 8). The Applicant owes a delinquent credit card debt in the amount of \$3,495.00; a deficiency in the amount of \$8,000.00 for a car repossession in October 1999; a delinquent credit card debt in the amount of \$4,000.00, a delinquent debt to a creditor in the amount of \$4,591.00; a delinquent debt to a bank in the amount of \$4,713.00; another delinquent debt to a bank in the amount of \$4,220.00, and a delinquent debt to a cellular telephone company in the amount of \$1,500.00. As of April 27, 2006, these debts remained outstanding. (Government Exhibits 7 and 8).

The Applicant's personal financial statement dated April 27, 2006, indicates that his monthly joint net income is about \$5,728.00 and after his monthly expenses and payments are made he has approximately \$2,550.00 as a remainder. (Government Exhibit 6). The Applicant, in his answer to the SOR, stated, "I'll start by saying I've given you the wrong impression if you think I have 2,500 after expenses, I failed to include my spouses expenses. I won't be able to address any of these delinquent accounts until my car is paid off next year. I do not request a hearing." (Government Exhibit 4).

In the Applicant's reply to the FORM he indicates that he inadvertently failed to include his girl friend's monthly expenses in his personal financial statement which are considered combined expenses. Her expenses include her monthly car payment, medical bills and payments to the Internal Revenue Service. The Applicant indicates that the money that is left at the end of the month is not enough to pay any delinquent debts he might have. He again contends that the delinquent debts listed in the SOR have fallen off of his most recent credit report.

### POLICIES

Enclosure 2 and Section E.2.2. 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 a security concern.

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 has financial problems that 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 a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in financial irresponsibility (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 his 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 under Guidelines F of the SOR.

The Applicant's delinquent financial matters have not been addressed. He has at least seven delinquent debts, including several credit cards, a car loan and utility bills, totaling approximately \$30,588.00. All of the debts remain owing. He contends that they are no longer showing as delinquent on his recent credit reports but he fails to submit proof of this. Although he and his girlfriend are employed, he indicates that he is unable to address the debts at this time. There is no evidence in the record to show that any payment plans have been set up or entered into with his past due creditors, or that he has made any attempt to resolve these issues. He indicates that he plans to address his delinquent debts when he has paid off his car next year. 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 factors apply. Given the fact that the only evidence in the record indicates that the debts remain owing and there has been no good faith effort to resolve them, I find against the Applicant under Guideline F (Financial Considerations).

In addition to the disqualifying and mitigating conditions in this case, I have also considered the "whole person" concept. Under the particular facts of this case, the Applicant may have recently made some significant changes in his life, and hopefully he will continue to follow down this positive path, however, his financial indebtedness has not been mitigated. I have considered the nature, extent and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, his age and maturity at the time of the conduct, the voluntariness of participation, the presence or absence of rehabilitation and other pertinent behavioral changes, the motivation of the conduct, the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence. I have considered each of these factors individually and collectively in reaching my overall conclusion.

The Applicant may be eligible sometime in the future for a security clearance. However, at this time, I cannot find that it is clearly consistent with the national interests to grant the Applicant a security clearance. 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 SOR.

### **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.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: For the Applicant.

Subpara. 1.e.: Against the Applicant.

Subpara. 1.f.: Against the Applicant.

Subpara. 1.g.: Against the Applicant.

Subpara. 1.g.: Against the Applicant.

Subpara. 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.

Darlene Lokey Anderson

Administrative Judge