

November 14, 1996

In Re:

SSN: -----

Applicant for Security Clearance

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ISCR OSD Case No. 96-0183

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

Appearances

FOR THE GOVERNMENT FOR THE APPLICANT

Melvin A. Howry, Esquire *Pro Se*

Department Counsel

STATEMENT OF THE CASE

On March 20, 1996, 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 the attached Statement of Reasons (SOR) to ----- (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 April 8, 1996. The case was assigned to the undersigned on May 16, 1996, and a Notice of Hearing was issued on June 4, 1996.

A hearing was held on August 28, 1996. The Government presented five documentary exhibits. The Applicant presented three documentary exhibits at the hearing. The Applicant also testified on his own behalf.

The last official transcript was received on September 9, 1996.

FINDINGS OF FACT

The Applicant is 36 years old, and single, and he has an Associates Degree. He is employed by a defense contractor as a Computer Programmer, and he seeks to obtain a Secret-Level 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 attached Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and criterion in the SOR:

Paragraph 1 (Criterion 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 1984, the Applicant began a business venture in construction with his father and brother. They incorporated the business and each became a shareholder. In approximately 1988, the Applicant was forced out of the business unwillingly. The Applicant continued to do contract work for the corporation, however, he also engaged in other separate business ventures to make ends meet. As a result of several clients failing to pay their bills, the Applicant became delinquent on several loans that were taken out to maintain his business operations. Over a ten year period, while the Applicant was self-employed, he continually fell behind on his bills because he did not have the money to pay them. The Applicant has admitted that most of the creditors listed in SOR allegations 1.(a), 1.(b), 1.(c), 1.(d), 1.(e), 1.(f), and 1.(g) are debts he incurred to finance his business ventures and are all still outstanding. (Government Exhibit 2 and Applicant's Answer to SOR)

In an effort to come to some agreement with regard to payment of these debts, the Applicant contacted his creditors by letter on October 24, 1994; December 23, 1994; and November 12, 1995. (See, Government's Exhibit 3). The Applicant claims that although he received numerous harassing telephone calls and letters demanding payment not one of his creditors have been willing to deal with him under his conditions. The Applicant is of the opinion that he and his creditors must come to an agreement in writing before he will begin payment. He wants to protect himself with a paper trail. The Applicant testified that, " I have not paid a dime towards them, nor right now do I have any plans to until I can find some means of getting a line of communication with those creditors." (Tr. Pg. 46).

Since November 12, 1995, the Applicant has had no further contact with his creditors. The Applicant testified that he has been trying to get his financial situation into a position to be able to pay his debts, by refinancing an existing loan, which will free up more disposable income.

In January 1995, the Applicant became employed full time with his current employer.

The Applicant's present monthly income is \$1,700.00. (Tr. Pg. 33).

Subparagraph 1(a) The Applicant is indebted in the amount of approximately \$6,091.73 for a debt opened in September 1986. This debt remains outstanding, and the Applicant has made no effort to pay this bill since August 28, 1995.

Subparagraph 1(b) The Applicant is indebted in the amount of approximately \$12,742.18 for a debt opened in March 1988. This debt remains outstanding, and the Applicant has made no effort to pay this bill since September 14, 1995.

Subparagraph 1(c) The Applicant is indebted in the amount of approximately \$3,379.30 for a debt opened in June 1988. This debt remains outstanding, and the Applicant has made no effort to pay this bill since August 9, 1995.

Subparagraph 1(d) The Applicant is indebted in the amount of approximately \$6,810.70 for a debt opened in January 1991. This debt remains outstanding and the Applicant has made no effort to pay this bill since August 9, 1995.

Subparagraph 1(e) The Applicant is indebted in the amount of approximately \$3,717.00 for an account opened in February 1991. This debt also remains outstanding and the Applicant has made no effort to pay this bill since August 9, 1995.

Subparagraph 1(f) The Applicant is indebted in the amount of approximately \$7,2171.77 for an account opened in October 1991. This debt remains outstanding and the Applicant has made no effort to pay this bill since August 30, 1995.

Subparagraph 1(g) The Applicant is indebted in the amount of approximately \$6,275.00 for an account opened in August 1993. This debt remains outstanding and the Applicant has made no effort to pay this bill since September 18, 1995.

Subparagraph 1(h) The Applicant is indebted in the amount of approximately \$8,134.72 for an account opened in August 30, 1995. This debt remains outstanding and the Applicant has made no effort to pay this bill since August 30, 1995.

Mitigation.

Two letters of reference from friends and a previous co-worker of the Applicant reveal that the Applicant is very highly thought of. The Applicant is a responsible person who has high moral standards and a strong character. He is also very dedicated to his family and his career, and recognizes his position as one of public trust.

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 his 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:

Criterion 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.

Conditions 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.

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 experiencing excessive indebtedness caused by financial irresponsibility which demonstrates poor judgment or unreliability on the Applicant's part.

In DOHA cases, the Government has the initial burden to go forward with prima facie evidence in support of the factual and conclusionary allegations in the SOR. If the Government meets this initial obligation, 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 prima facie 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 prima facie evidence that since 1988, the Applicant has been financially irresponsible (Criterion F): and that 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 prima facie case.

The Applicant has failed to pay his past due debts, and has offered little, if any, evidence to demonstrate a changed lifestyle. The Applicant presently earns a gross income of \$1,700.00 per month. He has paid none of the debts set forth in the Statement of Reasons, which have been outstanding for more than a year. His past due indebtedness remains in excess of \$53,000.00, and he offers no reasonable excuse for neglecting his financial responsibilities.

Although the Applicant became indebted because of his business ventures and has taken some efforts on several occasions to write letters to each of his creditors concerning his financial indebtedness, these facts do not qualify as mitigating under the particular circumstances of this case. It is totally unreasonable for the Applicant to believe that he will determine the conditions under which his creditors will operate, and that a structured payment agreement must be in

writing before he decides to pay his debts. He does not set the conditions by which he makes payment arrangements. The Applicant's creditors will determine the conditions under which the Applicant will be subject to operate. Furthermore, each creditor will determine the means of communication, that they find acceptable. The fact remains that at the present time, the Applicant has not scheduled a payment program nor has he paid any of these creditors. In fact, it can be said that the Applicant has simply ignored the creditors and their continued requests for payment. Under the circumstances, the Applicant cannot be deemed to be sufficiently rehabilitated in the area of his personal finances to warrant granting his security clearance request.

On balance, it is concluded that the Applicant has failed to overcome the Government's prima facie 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.

Subparas. 1.a.: Against the Applicant.

1.b: Against the Applicant

1.c. Against the Applicant

1.d. Against the Applicant

1.e. Against the Applicant

1.f. Against the Applicant

1.g. Against the Applicant

1.h. 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