

May 31, 1997

In Re:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 97-0077

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

Appearances

FOR THE GOVERNMENT FOR THE APPLICANT

Martin H. Mogul, Esquire *Pro Se*

Department Counsel

STATEMENT OF THE CASE

On January 28, 1997, 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 February 18, 1997, 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 April 11, 1997. The Applicant was instructed to submit information in rebuttal, extenuation

or mitigation within 30 days of receipt. Applicant received the FORM on April 14, 1997, and he submitted no reply.

This case was assigned to the undersigned for resolution on May 28, 1997.

FINDINGS OF FACT

The Applicant is 44 years old, and married. He is employed by a defense contractor 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 1985, the Applicant was divorced from his wife and became liable for many of the debts incurred during the marriage. About this same time, the Applicant quit his job to take a much higher paying position with a different company. The new position never materialized, and the Applicant began to experience some serious financial difficulties. Expecting to start the new position, the Applicant entered into a child support agreement with his former wife to pay her between \$600.00 and \$700.00 dollars per month. He was unable to meet this financial obligation. From 1985 until 1986, the Applicant survived almost exclusively on unemployment benefits. During this period, his debts and monthly expenses became past due and delinquent.

In 1986, the Applicant became employed and worked until he was laid off in 1991. The Applicant indicates that his combined household income in 1991 was approximately \$100,000.00. The Applicant was unemployed from June 1991, until January 1993, and survived only on his unemployment benefits and his retirement savings. His income went down to \$40,000.00 in 1993 and 1994.

In 1995, the Applicant started working full time with his current employer. His income increased to \$80,000.00 in 1996.

In addition to those debts outlined below, the Applicant's wages were garnished on at least two occasions during the period from January 11, 1994 to September 25, 1995.

Subparagraph 1(a) The Applicant admits that he is indebted in the amount of approximately \$5,514.10 for a credit card debt opened in November 1989. This debt remains outstanding, and the Applicant has made no effort to pay this bill since December 1996. The Applicant states that this creditor will not accept partial payments but requires the entire balance which he is unable to pay.

Subparagraph 1(b) The Government alleges that the Applicant is indebted in the amount of \$298.56 for a balance owed on an electric service account opened on April 5, 1990, and terminated on September 17, 1992. The Applicant is uncertain as to whether he owes this debt, and there is no evidence in the record that he does. The Applicant indicates that he has asked for an explanation of the debt to determine if it is his, and if he does owe it, he will pay it immediately.

Subparagraph 1(c) The Applicant admits that he is indebted in the amount of approximately \$383.17 to the Internal Revenue Service for back taxes owed for tax year 1992. This debt remains outstanding, and the Applicant has made no effort to pay this bill. The Applicant has contacted the Internal Revenue Service for an explanation of the debt, as they are currently showing that the debt has increased to \$864.55.

Subparagraph 1(d) The Government alleges that the Applicant is indebted in the amount of \$1,3820.72 for a telephone service account which was closed in July 1990. The Applicant is uncertain as to whether he owes this debt, and there is no evidence in the record that he does. The Applicant indicates that he has asked for an explanation of the debt to determine if it is his, and if he does owe it, he will pay it immediately.

Subparagraph 1(e) The Applicant admits that he is indebted in the amount of approximately \$53,394.00 for a child

support obligation account opened in July 1994. This debt also remains outstanding and the Applicant has made no effort to pay this bill since December 11, 1996. The Applicant claims that this debt was assessed based upon the base salary of a position that he never held which is part of his divorce decree. The Applicant indicates that he has made efforts to change the support arrangements but has had no cooperation from his former wife or her attorney. The Applicant continues, however, to pay \$160.00 to \$170.00 dollars in child support every two weeks, and does not see how he will ever be able to pay off this debt.

On January 16, 1996, the Applicant provided a sworn statement to the Department of Defense and a personal financial statement which reflects a monthly net remainder of approximately \$500.00. The personal financial statement does not include repayment of any of the Applicant's delinquent debts. Although the Applicant in a subsequent sworn statement confirmed that the personal financial statement was accurate, he now claims that he did not provide accurate information on his personal financial statement, as he did not review his financial records before completing the form.

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:

- (3) 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).

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 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 introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's prima facie case.

A series of very unfortunate circumstances largely beyond the Applicant's control led to his serious financial difficulties. As a result of his divorce, coupled with his leaving a job for a new position he was promised and never received, and his layoff in 1991, he has been unable to meet his financial obligations. It is conceivable that when confronted with this set of circumstances, one could find it very difficult to pay all his or her creditors on time. The Applicant is now employed full time and is able to pay his outstanding debts. With respect to those debts the Applicant is uncertain of, the Applicant has represented that he is in the process of determining whether they are his, and if so, he will pay them immediately. Under the extraordinary circumstances of this case, the Applicant is excused for his excessive indebtedness at this time, however he must quickly and swiftly pay all of his financial obligations and handle his financial matters, or be guaranteed to face future problems with his security clearance eligibility.

On balance, it is concluded that the Applicant has overcome the Government's prima facie case opposing his request for a security clearance. Accordingly, the evidence supports a finding for 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: For the Applicant.

Subparas. 1.a.: For the Applicant.

1.b: For the Applicant

1.c. For the Applicant

1.d. For the Applicant

1.e. For the Applicant

1.f. For the Applicant

1.g. For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

DARLENE LOKEY ANDERSON

Administrative Judge