

DATE: December 11, 1997

In Re:

Applicant for Security Clearance

ISCR Case No. 97-0168

DECISION OF ADMINISTRATIVE JUDGE

LOKEY-ANDERSON

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On February 21, 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 April 7, 1997. This case was assigned to the undersigned on August 19, 1997, and a Notice of Hearing was issued on August 26, 1997.

A hearing was held on October 9, 1997, at which the Government presented three documentary exhibits. The Applicant presented five documentary exhibits and testified on his own behalf. The Applicant also submitted one Post-Hearing Exhibit.

The official transcript was received on October 17, 1997.

FINDINGS OF FACT

The Applicant is thirty-six years old, married, and has a Masters Degree in Engineering. He is employed by a defense contractor as a Member of the Technical Staff, and he is applying for 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.

From 1989 through 1995, the Applicant was either unemployed or had no steady income. During the seven year period,

the Applicant fell behind on his financial obligations and many of his debts became delinquent. The Applicant made no effort to contact his past due creditors because he did not have the money to pay them.

The Applicant was laid off in 1989 from his employment with a defense contractor. He then went to graduate school from 1990 to 1992, during which time he had no income. In 1993, the Applicant worked for about nine months before he left his job to move out of the state to care for his ailing mother-in-law. In 1994, the Applicant taught school and received low wages. In 1995, he returned to school in pursuit of a Ph.D. in Engineering, and was subsidized by a fellowship until 1996. In 1996, the Applicant was forced off of the fellowship because his wife became pregnant.

In November 1996, the Applicant began working for his current employer. In March 1997, the Applicant hired a credit counseling firm to assist him in paying his delinquent debts. The credit counseling firm is currently in the process of contacting the Applicant's creditors, negotiating payment agreements, and setting up a regular payment schedule to enable him to pay off his past due debts. (See, Applicant's Post Hearing Exhibit). Since March 1997, the Applicant has been making regular monthly payments of \$311.00 to the credit counseling firm and he intends to continue until all of his delinquent debts are paid in full. The credit counseling firm has advised the Applicant that it will take approximately \$10,000 to pay off his past due indebtedness which includes all of the debts listed in the Statement of Reasons. The Applicant's proposed payment schedule indicates that he is able to allocate \$400.00 per month to pay his delinquent debts. (See, Applicant's Post-Hearing Exhibit).

Subparagraph 1(a) The Applicant admits his indebtedness in the amount of approximately \$2,733.00 for an unpaid credit card debt since June 1990. This debt remains outstanding. (Tr. Pg. 36).

Subparagraph 1(b) The Applicant admits his indebtedness in the amount of approximately \$1,088.00 for an unpaid credit card debt since July 1990. This debt is still outstanding.

Subparagraph 1(c) The Applicant denies that he owes the amount of approximately \$1,088.00 for this unpaid credit card debt. Based upon information he received from the credit counseling firm, he no longer owes on this account. (Tr. Pgs. 53 and 74-77).

Subparagraph 1(d) The Applicant admits his indebtedness in the amount of approximately \$1,370.00 for an unpaid account since August 1990. This debt remains outstanding. (Tr. Pgs. 37 and 53-54).

Subparagraph 1(e) The Applicant admits his indebtedness in the amount of approximately \$1,414.00 for an unpaid credit card debt since October 1990. (Tr. Pg. 37).

Subparagraph 1(f) The Applicant denies that he owes approximately \$2,156.00 for this unpaid account since January 1991. Based upon information he received from the credit counseling firm, he no longer owes on this account. (Tr. Pgs. 54-55 and 78).

Subparagraph 1(g) The Applicant admits his indebtedness in the amount of approximately \$1,996.00 and \$6,137.00 for two unpaid credit union accounts since April 1992. These debts remain outstanding. (Tr. Pgs. 36 and 55-56).

Subparagraph 1(h) The Applicant admits his indebtedness in the amount of approximately \$598.00 for an unpaid health club membership account since June 1994. This debt remains outstanding. (Tr. Pg. 37).

The Applicant testified that his net monthly income is currently \$ 3,116.00. (Tr. Pg. 44). His monthly bills total about \$ 2,450.00. The Applicant believes that he now has sufficient financial resources to pay all of his delinquent debts, and he intends to continue paying them off until they are all satisfied.

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);
- (6) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

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.

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 *prima facie* 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 *prima facie* case. The Applicant bears the ultimate 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). 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.

Several unfortunate circumstances largely beyond the Applicant's control led to his serious financial difficulties. As a result of his employment layoff in 1989, his mother-in-law's illness in 1993, which required him to move out of state and leave a job, and his inability to find stable employment to support his family, until recently, the Applicant has been unable to meet his financial obligations. From 1989 until 1995, the Applicant was either unemployed or had no stable employment. It is conceivable that when confronted with these circumstances, one could find it very difficult to pay all of his or her creditors on time. The Applicant is now permanently employed, and has hired a credit counseling firm to assist him in paying his delinquent creditors. Since March 1997, the Applicant has been making regular monthly payments towards paying off his past due debts. The Applicant is now prepared to pay at least \$400.00 per month toward his delinquent debts until they are all completely paid in full. The Applicant credibly testified that he intends to pay off all of his creditors, and promptly handle all of his financial matters in the future. The Applicant has initiated a good faith effort to resolve his past due indebtedness.

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

1.h.: For the Applicant

1.i.: 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