

DATE: April 3,1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 98-0004

DECISION OF ADMINISTRATIVE JUDGE

LOKEY-ANDERSON

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On January 5, 1998, 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 January 15, 1998, in which she 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 January 14, 1998. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on February 20,1998, and she submitted no response.

The case was assigned to the undersigned for resolution on March 25, 1998.

FINDINGS OF FACT

The Applicant is 50 years old, married, and is employed by a defense contractor as an Executive Secretary. She is applying for a Secret-level security clearance in connection with her 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 she is financially overextended and at risk to engage in illegal acts to generate funds.

As a result of the declining construction business in 1991, the Applicant's husband, who is self employed in the construction business, was unable to get enough work to pay their bills. As a consequence, the Applicant fell behind on her financial obligations, and many of her debts became delinquent.

The Applicant's husband made the decision to discontinue paying the debts, and wanted to file Bankruptcy. The Applicant was reluctant to file Bankruptcy for fear that it would make a black mark on her credit, and would adversely effect her present employment. The Applicant also did not have the money to the cover the fees involved. The following debts listed in the SOR remain outstanding. (See, Applicant's Answer to SOR).

Subparagraph 1(a) The Applicant admits her indebtedness in the amount of approximately \$2,864.00 for the balance owed from a vehicle repossession since December 30, 1991.

Subparagraph 1(b) The Applicant admits her indebtedness in the amount of approximately \$2,870.00 for the balance owed from a vehicle repossession since December 30,1991.

Subparagraph 1(c) The Applicant admits her indebtedness in the amount of approximately \$2,224.00 for an unpaid credit card debt since January 31, 1992.

Subparagraph 1(d) The Applicant admits her indebtedness in the amount of approximately \$7,037.00 for an unpaid credit card debt since February 4, 1992.

Subparagraph 1(e) The Applicant admits her indebtedness in the amount of approximately \$734.00 for an unpaid credit card debt since February 1992.

Subparagraph 1(f) The Applicant admits her indebtedness in the amount of approximately \$7,654.00 for an unpaid credit card debt since 1992.

Subparagraph 1(g) The Applicant admits her indebtedness in the amount of approximately \$5,334.00 for an unpaid credit card debt since 1992.

The Applicant remains indebted in the total amount of approximately \$ 28,717.00. The Applicant states that she has no intention of paying these debts, because she cannot afford to. (See, Applicant's Exhibit 5). At the present time, the Applicant's regular monthly expenses are current.

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 her 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.

Condition 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.

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 not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's *prima facie* case.

The evidence shows that unfortunate circumstances largely beyond the Applicant's control led to her serious financial difficulties. It is conceivable that the downturn in the construction business was partially responsible for the Applicant's inability to pay her creditors on time. However, since December 1990, the Applicant has been permanently employed, and she has made no effort to pay her creditors. The Applicant's debts have not been discharged, because she has not filed Bankruptcy. In addition, she has stated that she does not intend on paying her creditors. The Applicant has not initiated a good faith effort to resolve her past due indebtedness. Accordingly, she does not meet the eligibility for access to classified information.

On balance, it is concluded that the Applicant has not overcome the Government's *prima facie* case opposing her 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