

DATE: September 25, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 98-0291

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY-ANDERSON

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On May 29, 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 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 June 22, 1998, 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 July 16, 1998. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on July 21, 1998, and he submitted no response.

The case was transferred to the undersigned for resolution on September 24, 1998.

FINDINGS OF FACT

The Applicant is 44 years old, married and is employed by a defense contractor as a Material Dispatcher. 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. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

The Applicant has admitted to a variety of delinquent debts. (See, Applicant's Answer to SOR and Government Exhibit 6).

Subparagraph 1(a) The Applicant was indebted to a creditor in the amount of \$68.00 for an account referred to collection in May 1991. The Applicant states that in June 1998, he satisfied the debt, and that it is no longer outstanding.

Subparagraph 1(b) The Applicant was indebted to a credit bureau in the amount of \$480.00 for a debt referred to collection in May 1991. In June 1998, the Applicant satisfied the debt, and it is no longer outstanding. (See, Applicant's receipt attached to Answer to SOR).

Subparagraph 1(c) In 1994, the Applicant wrongfully received proceeds of a life insurance policy that was intended to benefit his two minor nephews under a constructive trust. Instead, the Applicant spent the proceeds for the benefit of himself and his wife. No part of the funds or interest earned by the funds were used or given to his nephews as their intended inheritance. In June 1994, a judgment was entered against the Applicant in the amount of approximately \$30,584.89. In August, 1994, a judgment was entered against him in the amount of approximately \$5,085.27 for plaintiff's costs and attorney fees. (See, Government Exhibit 4). The Applicant contends that he has written a letter to the children's attorney to set up a payment plan, however, he has made no payments toward the outstanding judgment. (See, Applicant's Answer to SOR).

Subparagraph 1(d) The Applicant was indebted to the State taxing authorities in the amount of \$600.00 for a tax lien that was filed against him in July 1995. The Applicant states that he paid the taxes owed, and that the tax lien was released in June 1997. (See, Applicant's attachment to Answer to SOR).

Subparagraph 1(e) The Applicant was indebted to a department store in the amount of \$21.00 for a delinquent account. In June 1998, the Applicant satisfied the debt, and it is no longer outstanding. (See, Applicant's receipt attached to Answer to SOR).

Subparagraph 1(f) The Applicant was indebted to a department store in the amount of \$56.00 for a delinquent account. The Applicant states that in June 1998, he satisfied the debt, and that it is no longer outstanding.

The Applicant's personal financial statement of January 29, 1998, indicates that he has a net remainder of \$1,081.05 after his expenses. (See, Government Exhibit 7).

Paragraph 2 (Criterion E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in conduct involving questionable judgment, untrustworthiness, unreliability, or an unwillingness to comply with rules and regulations.

On February 3, 1997, the Applicant completed a Questionnaire for National Security Positions which required him to indicate whether in the last seven years, he has ever been over 180 days delinquent on any debts, and whether he was currently 90 days overdue on any debts. The Applicant responded "no", to both questions. (See, Government Exhibit 5, Questions 28.a, and 28.b.) The Applicant contends that his wife has been in control of paying the family bills, and that he had no knowledge of the extent of his past due indebtedness. The Applicant stated that had he known, he would have answered "yes" to the questions. Under the circumstances, I find that the Applicant has been financially irresponsible and not aware of his debts, but that he did not deliberately omit, or intentionally conceal his financial history.

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 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:

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

Criterion E (Personal Conduct)

Conditions that could raise a security concern:

- (2) deliberate omission, concealment, falsification or misrepresentation of relevant and material facts from any personnel security questionnaire;

Conditions that could mitigate security concerns:

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.

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 a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in criminal conduct, which demonstrates poor judgment, untrustworthiness or unreliability.

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 involved in 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 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 or her a security clearance.

In this case the Government has met its initial burden of proving by evidence that the Applicant has engaged in financial irresponsibility (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 case.

With respect to the Applicant's deliberate omission of material information concerning his financial history on his security clearance questionnaire, I find that it was not intentional. Accordingly, Criterion E (Personal Conduct), is found for the Applicant.

The record evidence establishes that the Applicant has engaged in a pattern and history of financial irresponsibility starting about seven years ago, and continuing until as recently as June of this year. Although he has made some effort to pay off his small debts, he remains indebted in the amount of approximately \$36,000.00, for two superior court judgments against him in 1994, for violating the terms of a constructive trust. He has made no effort to pay this debt. Most troubling is the fact that he has engaged in criminal conduct by his wilful and malicious spending of life insurance proceeds which he knew were not intended for his benefit. This misconduct is serious, recent, and shows immaturity and extreme poor judgment.

The Applicant has also failed to respond to the File of Relevant Material, which leaves the record silent on the issue of rehabilitation. Although the Applicant shows some sensitivity to his past financial behavior, it is not clear that the Applicant has gained the necessary insight into the seriousness of his conduct, or whether he is prepared to act responsibly in the future. I cannot say that he is unlikely to repeat his irresponsible conduct. I find that the Applicant's financial irresponsibility was not isolated, is recent, and could possibly recur in the future. Accordingly, Criterion F, is found against the Applicant.

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 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.

Subpara. 1.a.: For the Applicant.

Subpara. 1.b.: For the Applicant.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: For the Applicant.

Subpara. 1.e.: For the Applicant.

Subpara. 1.f.: For the Applicant.

Subpara. 1.g.: Against the Applicant.

Paragraph 2: For the Applicant.

Subpara. 1.a.: For the Applicant.

Subpara. 1.b.: For the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

DARLENE LOKEY-ANDERSON

Administrative Judge