

DATE: February 8, 1999

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 98-0477

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On September 17, 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, as amended by Change 3, 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 a clearance should be granted, continued, denied or revoked.

This case was transferred to the undersigned on December 1, 1998, and a Notice of Hearing was issued on December 8, 1998. A hearing was held on January 12, 1999, at which the Government presented eleven documentary exhibits, and called two witnesses to testify. The Applicant presented two documentary exhibits, and testified on his own behalf.

This transcript was received on January 20, 1999.

FINDINGS OF FACT

The undersigned Administrative Judge completely and thoroughly reviewed the evidence of record, and upon due consideration of the same, makes the following Findings of Fact:

The Applicant is 26 years old. He is employed by a defense contractor as a Senior Plastic Parts Fabricator, and seeks a DoD security clearance in connection with his employment in the defense industry.

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 J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance

because he has engaged in criminal conduct.

The Applicant was arrested in July 1996, for Inflict Corporal Injury to a Spouse, a felony in the state in which it occurred; False Imprisonment; Preventing a Victim From Reporting a Crime; Battery; and Willful Cruelty to a Child. The Applicant testified that his wife was attempting to take their infant son to a drug environment where she intended on purchasing drugs. He pushed her and grabbed a necklace from around her neck to prevent her from leaving. He was subsequently arrested. The Applicant was found guilty of spousal abuse, and the remaining charges were dismissed. He was fined \$300.00, placed on probation for three years, and referred to a Domestic Recovery Program. The Applicant has paid the fine, and completed the 52 week domestic recovery program. He currently remains on probation for this offense. (See, Government Exhibits 3 and 8, and Applicant's Exhibit A).

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.

Prior to his arrest in July 1996, the Applicant's wife reported him to the military's Family Advocacy Center on at least three separate occasions for physical spousal abuse. In June 1995, the Applicant was reported for kicking and restraining his wife. (See, Government Exhibit 1). The Applicant stated that he pushed her, and tried to grab the car keys from her to stop her from driving their vehicle with a revoked license. As a result, he was placed on a rigorous monitoring program.

In January 1996, the Applicant's wife again reported the Applicant for kicking her. The Applicant explained that he was just playing around with his wife and kicked her. (Tr. pg. 73). The military placed the Applicant on probationary status, and he was referred to Counseling and the Assistance Center for referral and evaluation.

The Applicant testified that he received one on one counseling for his abusive behavior. A letter from a member of the staff at the Family Advocacy Center indicates that the Applicant was abusive to the staff of the Family Advocacy Program from September 1995 to about July 1996, and that he displayed no motivation for change. (See, Government Exhibit 4). The Applicant contends that he was not abusive to the staff, but simply disagreed with their point of view. The record evidence reflects other incidents of physical spousal abuse which were not cited in the SOR. (See, Government Exhibit 4).

In March 1996, the Applicant's wife reported him again to the Family Advocacy Program. She stated that the Applicant was running his head into walls, and took a butcher knife to his throat, stating that he would kill himself. She further stated that the Applicant had held her against her will for more than three days, had taken parts of her vehicle in order to disable it, had taken her keys, identification and jewelry, and had threatened to take their child if she reported his actions. A military protection order or restraining order was issued against the Applicant. (See, Government Exhibit 4).

The Applicant testified that his wife's drug involvement, and her coming home from night school in the early hours of the morning, caused some of their marital problems. (Tr. pgs. 72 and 73).

From October 1994 to April 1995, the Applicant was deployed overseas. The Applicant testified that during this period, his wife was receiving 99 percent of his earnings to pay the family bills. When he returned, he discovered that the bills had not been paid and a car was repossessed. The Applicant then transferred the money from his joint account to his personal account in about June 1995 to prevent his wife from accessing the funds. The Applicant testified that his wife had a problem with spending money and writing bad checks. (Tr. pg. 51).

From July 1996 until February 1997, the Applicant was separated from his wife. During this period, he states that his wife received \$1,000.00 a month to pay bills and live on. Many of their bills became delinquent, and a second car was repossessed. In February 1997, the Applicant and his wife got back together.

In September 1996, the Applicant was recommended for separation from the armed forces due to his failure to acknowledge or assume responsibility for his abusive behavior. (See, Government Exhibit 4). The Applicant received an honorable discharge from the military in March 1997. He is currently in the navy reserves.

The Applicant completed a Security Clearance Application dated May 23, and June 19, 1997, which asked him if in the last seven years his wages had been garnished, or if he had any property that had been repossessed for any reason. The Applicant answered "no." (See, Government Exhibit 5, Question 27b). This was a false response. Two of the Applicant's vehicles were repossessed, one in 1994, and the other in 1997. The Applicant stated that he did not read the question carefully before answering the question. He was overwhelmed with the paper work, and simply made an honest mistake. (See, Tr. pgs. 34 and 35). I find that the Applicant was indeed careless, and did not read the question fully. I do not believe that he knowingly and willfully attempted to conceal this information from the Government. Accordingly, subparagraph 2. h., is found for the Applicant.

During an interview on September 22, 1997, the Applicant stated that his wife did not make regular payments on his debts, which caused them to become delinquent, that she had enough money to pay them, and that he was making enough money to begin paying on his delinquent debts. The evidence is mixed as to whether the Applicant's wife actually had sufficient funds to pay their debts, or whether she caused the bills to become delinquent. I find that the Applicant was not properly handling his financial affairs, and did not have sufficient knowledge about them. However, I do not believe that he intentionally lied to the Government concerning this statement. Accordingly, subparagraph 2. i., is found for the Applicant.

In a sworn statement dated February 4, 1998, before a Special Agent from the Defense Investigative Service the Applicant stated that his wife satisfied the deficiency balance on his 1991 truck which was repossessed, and that his wife failed to make the payments on his 1995 truck which resulted in its repossession. The evidence establishes that the deficiency balance on his 1991 truck was discharged in his Chapter 7 Bankruptcy on January 14, 1998. (See, Government Exhibit 9). I find that the Applicant has neglected his financial affairs, and did not have sufficient knowledge about them. However, I do not believe the Applicant intentionally falsified this information. Accordingly, subparagraph 2. j., is found for the Applicant.

The Applicant has filed for divorce and is making monthly child support payments. (Tr. pg. 86 and Applicant's Exhibit B).

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 J (Criminal Conduct)

Conditions that could raise a security concern:

- (1) any criminal conduct regardless of whether the person was formally charged;
- (2) a single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns:

None.

Criterion E (Personal Conduct)

Conditions that could raise a security concern:

(4) a pattern of dishonesty or rule violations.

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.

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 a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in repeated instances of criminal conduct and personal conduct which demonstrates poor judgment or unreliability on the Applicant's part.

Furthermore, the Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an Applicant has demonstrated a lack of respect for the law in his or her private affairs, there then exists the possibility that he or she may demonstrate the same attitude towards security rules and regulations.

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 regard to the Applicant's personal conduct, I find that he did not intentionally falsify material information from the government during his background investigation. I do find, however, that other incidents of personal conduct set forth in subparagraphs 2. a., through 2. g., of the SOR show a pattern of behavioral problems, poor judgment and unreliability.

In this case, the evidence shows that the Applicant on at least three separate occasions prior to July 1996, was reported to the military's Family Advocacy Center for physical spousal abuse. The Applicant received extensive one on one counseling treatment for his abusive behavior. In April 1996, the Family Advocacy Center declared the Applicant to be a treatment failure. The treatment was obviously unsuccessful, considering the fact that the Applicant was subsequently arrested for spousal abuse in July 1996. The Applicant presently remains on probation for this offense. The Applicant shows little remorse for his abusive behavior in the past. He fails to acknowledge or assume responsibility for his conduct, and continues to show poor judgment.

Under the circumstances, the Applicant cannot be deemed to be sufficiently rehabilitated in the area of his criminal conduct and personal conduct to warrant granting his security clearance request. Accordingly, I find against the Applicant under Criteria J, (Criminal Conduct) and E, (Personal Conduct).

On balance, it is concluded that the Applicant has not overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 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.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Paragraph 2: Against the Applicant.

. Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

Subpara. 2.c.: Against the Applicant.

Subpara. 2.d.: Against the Applicant.

Subpara. 2.e.: Against the Applicant.

Subpara. 2.f.: Against the Applicant.

Subpara. 2.g.: Against the Applicant.

Subpara. 2.h.: For the Applicant.

Subpara. 2.i.: For the Applicant.

Subpara. 2.j.: For the Applicant.

DECISION

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

Darlene Lokey Anderson

Administrative Judge