

DATE: June 30, 1999

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 99-0024

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY-ANDERSON

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On January 20, 1999, 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 February 26, 1999, 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 May 12, 1999. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on May 27, 1999, and he submitted a reply dated June 19, 1999.

The case was assigned to the undersigned for resolution on June 29, 1999.

FINDINGS OF FACT

The Applicant is 51 years old, and is employed by a defense contractor as a Test Equipment Development Mechanic. 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 admits to all of the delinquent debts set forth in the SOR. (See, Applicant's Answer to SOR). The Applicant states that he was current with his financial obligations up until the end of 1995, or the beginning of 1996. From March 1995 through March 1996, the Applicant was unemployed, and moved around a lot looking for work. During this period, his bills did not catch up with him. (See, Government Exhibit 5). On those occasions when he did talk with his creditors, he did not have the money to pay them. The following debts listed in the SOR total approximately \$54,000.00, and remain outstanding.

Subparagraph 1(a) The Applicant is indebted to a creditor in the amount of \$2,663.00 for an account delinquent since approximately December 1995.

Subparagraph 1(b) The Applicant is indebted to a creditor in the amount of \$12,550.00 for an account delinquent since approximately December 1995.

Subparagraph 1(c) The Applicant is indebted to a creditor in the amount of \$2,852.00 for an account delinquent since December 1995.

Subparagraph 1(d) The Applicant is indebted to a creditor in the amount of \$23,082.00 for an account delinquent since approximately December 1995.

Subparagraph 1(e) The Applicant is indebted to a creditor in the amount of \$1,755.00 for an account delinquent since approximately December 1995.

Subparagraph 1(f) The Applicant is indebted to a creditor in the amount of \$8,303.00 for an account delinquent since December 1995.

Subparagraph 1(g) The Applicant is indebted to a creditor in the amount of \$195.00 for an account delinquent since December 1995.

Subparagraph 1(h) The Applicant is indebted to a creditor in the amount of \$469.00 for an account turned over for collection in November 1997.

Subparagraph 1(i) The Applicant is indebted to a creditor in the amount of \$121.00 for an account turned over for collection in December 1997.

Subparagraph 1(j) The Applicant is indebted to a taxing authority in the amount of \$2,500.00 for a tax lien filed against him in March 1998.

The Applicant states that he intends to pay all off his credit obligations as soon as he is able. He further states that he became employed with a defense contractor in July 1998, and is not sure if he is going to be laid off. The Applicant's personal financial statement of December 1, 1998, indicates that he has a net remainder of \$1,312.00 after his expenses. (See, Government Exhibits 3, subparagraph 1(k), and 5.

Paragraph 2 (Criterion J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he violated both a State and Federal criminal statute.

The Applicant failed to timely file his State Income Tax Returns for tax years 1995 and 1997, in violation of a misdemeanor provision of the State Revenue and Tax Code. (See, Government Exhibit 3, subparagraphs 2(b) and 2(e)). The Applicant also failed to timely file his Federal Income Tax Returns for tax years 1995, 1996, and 1997 in violation of Title 26, United States Code, Section 7203, a misdemeanor. (See, Government Exhibit 3, subparagraphs 2(a), 2(c), and 2(d)). The Applicant acknowledges his responsibility to file both State and Federal tax returns. He states that he intends to file all of his income tax returns by April 1999. He also stated that if it is determined that he owes back taxes, he will arrange a payment plan.

The Applicant's wages are presently being garnished by the state tax authority for back taxes owed. The Applicant has contacted the Federal tax authority and is in the process of working out a payment schedule. He believes that he owes back taxes for 1995, but should get a return for tax years 1996 and 1997. (See, Applicant's Reply to the FORM dated June 19, 1999).

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:

- (3) the conditions that resulted in the behavior were largely beyond the person's control (i.e., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation).

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.

Condition 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 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 and criminal conduct 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 been financially irresponsible (Criterion F), and has failed to file his State and Federal income tax returns (Criterion J). The Applicant has failed to mitigate the Government's case and show that he is eligible for a security clearance.

The evidence shows that the Applicant has been financially irresponsible. (See, Government Exhibit 6). The Applicant's period of unemployed in 1995, which was largely beyond his control, is partially responsible for his past due indebtedness. However, since gaining employment in July 1998, the Applicant had made no effort to clear up his indebtedness. The Applicant's personal financial statement shows that he has sufficient resources available to pay some of the outstanding debt, but he fails to do so. He still currently owes approximately \$54,000.00. Under the circumstances, the Applicant cannot be deemed to be sufficiently rehabilitated in the area of his personal finances to warrant granting his security clearance request. Accordingly, I find against the Applicant under Criterion F, (Financial Considerations).

The Applicant has wilfully, and without reasonable excuse, failed to file his State income tax returns for tax years 1995 and 1997, and his Federal income tax returns for tax years 1995, 1996 and 1997, in violation of both State and Federal statutes cited above. He has simply ignored his tax filing responsibilities over the past three years. This conduct shows extremely poor judgment, unreliability, untrustworthiness and a clear disrespect for the law. He has not provided any logical, reasonable and acceptable explanation or excuse for the misconduct. Accordingly, I find against the Applicant under Criterion J, (Criminal Conduct).

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 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.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: Against the Applicant.

Subpara. 1.e.: Against the Applicant.

Subpara. 1.f.: Against the Applicant.

Subpara. 1.g.: Against the Applicant.

Subpara. 1.h.: Against the Applicant.

Subpara. 1.i.: Against the Applicant.

Subpara. 1.j.: Against the Applicant.

Subpara. 1.k.: 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.

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