

DATE: September 20, 2007

In Re:)
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 -----) ISCR Case No. 07-00479
 SSN: -----)
)
 Applicant for Security Clearance)
)
)

**DECISION OF ADMINISTRATIVE JUDGE
DARLENE LOKEY ANDERSON**

APPEARANCES

FOR GOVERNMENT

Jennifer Goldstein, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has worked hard to resolve his indebtedness that accumulated after he was reduced in rank to E-4 in December 2000, as a result of his captain's mast. His omissions on his security clearance application concerning his criminal record and financial indebtedness were not intentional, but careless, and have been mitigated. Clearance is granted.

STATEMENT OF THE CASE

On April 27, 2007, 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) issued a 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 May 23, 2007, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on July 23, 2007. A notice of hearing was issued on August 3, 2007, scheduling the hearing for August 27, 2007. At the hearing the Government presented eight exhibits. The Applicant presented two exhibits and testified on his own behalf. The record was left open until September 10, 2007 to allow the Applicant to submit additional documentation. The Applicant submitted one Post-Hearing Exhibit, consisting of nine enclosures and nine pages referred to as Applicant's Post-Hearing Exhibit A through A(9). The official transcript (Tr.) was received on September 6, 2007.

FINDINGS OF FACT

The Applicant is 32 years old, married, and he has a high school diploma. He is employed by a defense contractor as an Aircraft Mechanic and is seeking to obtain his 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 Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline 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.

The Applicant was an active duty member of the Navy from February 1996 through February 2003. In December 2000, he received an Article 15 of the Uniform Code of Military Justice for forgery, (violation of UCMJ Article 123); insubordinate conduct toward a warrant officer, non-commissioned officer, or petty officer (violation of UCMJ Article 91); and unauthorized absence (violation of UCMJ Article 86). He was reduced in grade to E-4. After this pay reduction, which reduced his income about \$1,000.00 a month, he began to struggle to pay his bills and accumulate debt. He began to prioritize his bills and only paid what was necessary for survival and to support of his family.

The Applicant became indebted to eight separate creditors for a total of at least \$17,686.00. (See Government Exhibits 3, 4, 5 and 6). Although his wife wanted to file Bankruptcy and discharge their delinquent debts, the Applicant did not want to. He wanted to be responsible and pay the debts that they owe. (Tr. p. 53). With regard to each of the debts listed in the SOR, the Applicant has submitted documentation showing that he has either paid off the debt or set up a payment plan to resolve the debt. A debt for medical services in the amount of \$261.00 was paid in full in August 2007. (Applicant's Post-Hearing Exhibit A(1).) A settlement agreement in the amount of \$3,000.00 has been reached for a debt owed to Triad Financial in the amount of \$12,862.00. The \$3,000.00 will be paid in full no later than September 17, 2007. (Applicant's Post-Hearing Exhibit A(2).) A debt owed to Gateway Community in the amount of \$531.00 has been paid in full. (Applicant's Post-Hearing Exhibit A(3).) A debt owed to Capital One in the amount of \$1,715.00 was settled and paid in July 2007. A debt to HSBC in the amount of \$590.00 was paid in full in September 2006. (Applicant's Post-Hearing Exhibit A(4).) A payment arrangement has been reached for a debt owed to Palisades, now Penn Credit Corp. allowing the Applicant to pay \$114.86 a month that will be automatically deducted out of his checking account on the 4th of each month. A debt owed to Sprint in the amount of \$534.00 has been resolved.

Upon review of the Applicant's current financial picture, he takes home \$2,400.00 a month from his employer, and he receives \$222.00 monthly in disability benefits from Veteran Affairs. His wife is a student and is not employed. They have no children. After paying his monthly living expenses, he has a small amount left to pay his bills. Since receiving the SOR, he has been saving his extra money each month and using it to pay his delinquent debts.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

The Applicant completed a Questionnaire for National Security Positions, otherwise known as a security clearance questionnaire, dated March 27, 2006. Question 23(e) asked if in the last 7 years, have you been subject to court marital or other disciplinary proceedings under the Uniform Code of Military Justice. The Applicant answered, "NO". (See Government Exhibit 2). The Applicant failed to disclose that on or about December 20, 2000, he was reduced in grade to an E-4 as a result of non-judicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) for forgery, (violation of UCMJ Article 123); insubordinate conduct toward a warrant officer, non-commissioned officer, or petty office (violation of UCMJ Article 91); and unauthorized absence (violation of UCMJ Article 86).

As to why the Applicant did not reveal his non-judicial punishment in response to question 23(e), that should have included his captains mast in 2000, he states that he was simply on "auto mode" answering "NO" to the questions, because other than this situation, he has no police record and has never been in any trouble. He was not careful in reading the questions before answering them. He did not realize the question asked him to include a captains mast. (Tr. pp. 45-46).

Question 28(a), of the same questionnaire asked him if in the last seven years, have you been over 180 days delinquent on any debts. The Applicant answered "YES," and disclosed one debt. (See Government Exhibit 2). This was not an accurate response. The Applicant had other delinquent debts he did not list in response to this question. However, it must be noted that the debt he revealed was the largest delinquent debt he owed and he was obviously not trying to conceal that. Question 28(b) asked the Applicant if in the last seven years have you been over 90 days delinquent on any debts. The Applicant answered, "NO". He failed to disclose his delinquent debts set forth in the SOR under subparagraphs 1(a) through 1(f) and 1(h).

The Applicant credibly testified that when he filled out the application, he was at work. He obviously was not careful in answering the questions. He stated that he did not reveal any other debts in response to these questions because he was not aware that the debts were on his credit report. He had never received collection notices from any of the creditors and did not know the specifics of the debts until this background investigation. Under the particular facts here, I find that the Applicant did not deliberately fail to list his criminal or delinquent financial history on his security clearance application. Accordingly, I find that the Applicant did not deliberately attempt to conceal this information from the Government.

Four letters of recommendation submitted on behalf of the Applicant from his supervisor and other professional associates attest to the fact that the Applicant is considered professional, responsible, trustworthy, a person of strong ethical and moral character, a team player and an invaluable asset to the squadron. (See Applicant's Post-Hearing Exhibits A(5), A(6), A(7) and A(8).)

POLICIES

Enclosure 2 of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline F (Financial Considerations)

18. *The Concern.* Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Conditions that could raise a security concern:

19(a) inability or unwillingness to satisfy debts;

19(c) a history of not meeting financial obligation;

Conditions that could mitigate security concerns:

20(b) the conditions that resulted in the financial problem were largely beyond the person's control, (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

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

Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Condition that could raise a security concern:

16(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities

Condition that could mitigate security concerns:

None.

_____ In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, 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. 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 instances of financial irresponsibility or dishonesty 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 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 his security clearance.

In this case the Government has met its initial burden of proving that the Applicant has been financially irresponsible (Guideline F) and that his security clearance application contains some inaccuracies. (Guideline E). This evidence indicates poor judgment, unreliability and

untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with her security clearance eligibility.

Considering all of the evidence, the Applicant has introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case. With respect to his finances, instead of filing Bankruptcy to dissolve his debts, since receiving the SOR, he has saved his extra money and paid his debts, little by little, and/or set up payment arrangement to do so. He is commended for this showing of integrity and there is evidence of financial rehabilitation. The Applicant has demonstrated that he can properly handle his financial affairs. Under Guideline F (Financial Considerations), Disqualifying Conditions 19(a) *inability or unwillingness to satisfy debts*, and 19(c) *a history of not meeting financial obligations* apply. However, *Mitigating Conditions 20(b) the conditions resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business down turn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances*, and 20(d) *the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts* apply. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

The Applicant did not deliberately conceal his criminal or delinquent financial history from the Government in response to questions 23 and 28 on his security clearance application. Given the fact that he was at work when he filled out the application, and obviously in a hurry or pressed for time, he was admittedly careless and did not take time to fill out the questionnaire properly or give the application the required thought process needed to answer the questions correctly. He did, however, admit his largest debt although he failed to list others. Under the particular facts here, the Applicant did not deliberately omit any information, he was simply careless. He has learned from this experience and will be careful to be accurate when filling out the application in the future. Accordingly Guideline E, (Personal Conduct) is found for the Applicant.

I have also considered the "whole person concept" in evaluating whether the Applicant meets the qualifications for access to classified information. The Applicant's qualities, characteristics and circumstances have been considered. Except for one isolated incident of non-judicial punishment, in 2000, the Applicant served honorably in the United States Navy from 1996 through 2003. He has no police record and other than his delinquent debts that he has resolved for the most part, he has demonstrated that he is a responsible individual. He became employed with a defense contractor in 2004, and since then has gained the respect of his superiors and peers and is considered a valuable asset to the squadron. Although the Applicant has never before held a security clearance, he understands the responsibilities that go along with it.

On balance, it is concluded that the Applicant has overcome the Government's 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 Paragraphs 1 and 2 for 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.

- Subpara. 1a.: For the Applicant.
- Subpara. 1 b: For the Applicant.
- Subpara. 1 c: For the Applicant.
- Subpara. 1d: For the Applicant.
- Subpara. 1e: For the Applicant.
- Subpara. 1f: For the Applicant.
- Subpara. 1g: For the Applicant.
- Subpara. 1h: For the Applicant.

Paragraph 2 For the Applicant.

- Subpara. 2.a.: For the Applicant.
- Subpara. 2.b.: 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