

KEYWORD: Financial

DIGEST: Applicant's history of financial indebtedness caused by a long period of unemployment, underemployment and a divorce has been mitigated by a good faith effort to repay his creditors or otherwise resolve his indebtedness. Clearance is granted.

CASENO: 04-01813.h1

DATE: 06/22/2005

DATE: June 22, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-01813

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's history of financial indebtedness mainly caused by a long period of unemployment, underemployment and a divorce has been mitigated by a good faith effort to repay his creditors or otherwise resolve his financial indebtedness. Clearance is granted.

STATEMENT OF THE CASE

On September 28, 2004, 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 October 21, 2004, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 19, 2004. A notice of hearing was issued on December 16, 2005, scheduling the case for January 18, 2005. The hearing was held on January 18, 2005, at which the Government presented nine exhibits. The Applicant presented nine exhibits and called one witness to testify on his own behalf. The Applicant also testified on his own behalf. The official transcript (Tr.) was received on January 31, 2005.

FINDINGS OF FACT

The Applicant is 50 years old. He is employed in Publications Support for a defense contractor and is applying for a 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.

In September 1996, the Applicant was caught accessing pornographic web-sites during work hours. His employer's Human Resource Department threatened to investigate the matter by questioning his children and his exwife. Instead, the Applicant agreed to quit his job. During that same period, the Applicant was going through a divorce from his second wife. He states that he was so emotionally devastated that he not thinking right. He understands that he should never have engaged in this type of misconduct on the job.

Following this, for about a seven year period, from September 1996 to May 2001, the Applicant found it difficult to find work. He would go months without work or income. He relied on others for food and rent. He worked whenever there was an opportunity, with several temporary agencies. His limited income could not support his living expenses. He used his credit cards to pay his debts and became very indebted to his creditors and behind on child support payments.

The Applicant admits that each of the debts listed in the SOR became overdue and owing. His divorce caused additional financial difficulties. The Applicant's financial situation has been tight since then. The Government's evidence, namely the Applicant's credit report, supports each of the allegations in the SOR. (*See* Government Exhibits 3 and 4).

In route to the hearing, the Applicant and his mother had a discussion about his delinquent debts. The Applicant's mother testified credibly that even assuming her son (the Applicant) owed as much as \$100,00.00 in delinquent debt, she is willing and able to gift the money to him to pay his bills. (Tr. P. 37). She stated that the Applicant has never asked her for financial help. Her husband recently died and she has sufficient monies available to assist the Applicant with his delinquent debts. She is willing to gift the Applicant an inheritance early in order to pay off his delinquent debts. The Applicant has recently moved in with his mother in order to save money and to help her.

Allegation 1(a). The Applicant was indebted to a bank in the approximate amount of \$8,259.00. The Applicant has paid off the debt in full. (*See* Applicant's Post-Hearing Exhibit, Letter dated February 7, 2005).

Allegation 1(b). The Applicant was indebted to a bank in the approximate amount of \$9,091.00. The Applicant has paid off half of the debt and plans to pay off the rest immediately. (See Applicant's Post-Hearing Exhibit dated February 7, 2005).

Allegation 1(c). The Applicant was indebted to a bank in the approximate amount of \$863.00. Pursuant to an agreement with the creditor, the Applicant has been making payments of \$50.00 a month toward the debt and will continue to do so until it is paid in full. (See Applicant's Response to SOR).

Allegation 1(d). The Applicant was indebted to a bank in the approximate amount of \$4, 894.00. The Applicant has paid the debt off in full. (See Applicant's Post-Hearing Exhibit, Letter dated January 26, 2005).

Allegation 1(e). The Applicant was indebted to a creditor in the approximate amount of \$997.00. The Applicant has paid the debt off in full. (See Applicant's Post-Hearing Exhibit, Letter dated January 26, 2005).

Allegation 1(f). The Applicant was indebted to a creditor in the approximate amount of \$973.00. The Applicant has paid the debt off in full. (See Applicant's Post-Hearing Exhibit, Letter dated January 25, 2005).

Allegation 1(g). The Applicant was indebted to a creditor in the approximate amount of \$203.00. This debt remains outstanding. (See Applicant's Response to SOR).

Allegation 1(h). The Applicant is indebted to a creditor in the approximate amount of \$292.00. The Applicant has paid the debt off in full. (See Applicant's Post-Hearing Exhibit, Letter dated January 26, 2005).

Allegation 1(i). The Applicant was indebted to a County Superior Court for child support payments in the approximate amount \$26,661.82. He was ordered to pay \$596.00 monthly plus \$200.00 to arrears. On July 10, 2001, the court amended its order and found the Applicant in arrears of \$39,903.75 and ordered him to pay \$596.00 monthly and \$400.00 to arrears. The most recent assessment indicated that the Applicant was approximately \$48,000.00 behind in child support and alimony. This debt is currently in dispute and has not been paid. The Applicant has hired an attorney to assist him in disputing his claim, as he and his attorney believe that the arrearage claimed by the county is greatly in excess of what he actually owes. The Applicant's attorney has contacted the county counsel concerning the matter and an audit of the Applicant's account has been ordered. The Applicant believes his arrearage to more accurately be about \$26,000.00 which he plans to pay once the assessment is adjusted. (See Applicant's Post-Hearing Exhibit).

Other than the \$1,300.00 a month he pays in alimony and spousal support, once his delinquent debts are paid, he will have about \$3,000.00 a month in discretionary cash.

A character reference letter from the Applicant's supervisor dated January 12, 2005, indicates that he is a forthright and trustworthy member of the Publications team. He has a strong work ethic and understands the absolute criticality of the material he works with. (See Applicant's Exhibit A).

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)

Conditions that could raise a security concern:

1. A history of not meeting financial obligations;

3. Inability or unwillingness to satisfy debts.

Conditions 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;

6. The person has initiated a good faith effort to repay creditors or otherwise resolve debts.

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 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 him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant was financially irresponsible (Guideline F). 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 his 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, the Applicant's excessive indebtedness was mainly caused by his long period of unemployment or underemployment and his divorce. The rest of the debt was accumulated because of poor financial decisions. Applicant's Post-Hearing Exhibit contains letters from various creditors that verify that they have recently received payment in full from the Applicant. Obviously, his mother has gifted him an early inheritance that he has used to pay his delinquent debts. He has paid off most of his outstanding debts and resolved his financial problems. Only two or three of his debts remain outstanding, and he is in the process of getting them paid off. Mitigating Conditions (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,* and (6) *The person has initiated a good faith effort to repay creditors or otherwise resolve debts* in the Directive under Guideline F apply. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

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 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: For the Applicant.

Subpara. 1.a.: For the Applicant.

Subpara. 1.b.: For the Applicant.

Subpara. 1.c.: For the Applicant.

Subpara. 1.d.: For the Applicant.

Subpara. 1.e.: For the Applicant.

Subpara. 1.f.: For the Applicant.

Subpara. 1.g.: For the Applicant.

Subpara. 1.h.: For the Applicant.

Subpara. 1.i.: For the Applicant.

Subpara. 1.j.: 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