

KEYWORD: Financial

DIGEST: Applicant's history of financial indebtedness partially caused by he and his wife's loss of employment, and partially caused by poor money management has been mitigated by a good faith effort to repay his creditors or otherwise resolve his financial indebtedness, and an improved manner of handling his financial affairs. Clearance is granted.

CASENO: 04-02838.h1

DATE: 09/28/2005

DATE: September 28, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-02838

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's history of financial indebtedness partially caused by he and his wife's loss of employment, and partially caused by poor money management, has been mitigated by a good faith effort to repay his creditors or otherwise resolve his financial indebtedness, and an improved manner of handling his financial affairs. Clearance is granted.

STATEMENT OF THE CASE

On March 18, 2005, 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 15, 2005, notarized on May 23, 2005, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on July 19, 2005. A notice of hearing was issued on July 19, 2005, scheduling the hearing for August 30, 2005. At the hearing the Government presented eight exhibits. The Applicant presented six exhibits and he called three witnesses to testify. He also testified on his own behalf. He submitted one Post-Hearing Exhibit, consisting of eight pages. The official transcript (Tr.) was received on September 16, 2005.

FINDINGS OF FACT

The Applicant is 49 years old. He is employed as a Telecommunications Operator by 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.

During the Applicant's first marriage, almost twenty years ago, he and his wife had three main assets, their house and two cars. When their marriage started to deteriorate, they separated and agreed to divide their assets. They each took a car and they tried to sell the house to split the profits. Unfortunately, this was during a period where the housing market was not good. They were unable to sell the house. The Applicant and his wife filed for Chapter 13 bankruptcy protection in 1987, which was converted to Chapter 7 in 1988, but their home was eventually foreclosed upon. Their divorce was final in 1989.

In 1999, ten years later, during his second marriage to his current wife, who also had five children from a previous marriage that the Applicant was supporting, the Applicant's vehicle was repossessed for nonpayment. He testified that he was in the last two months of a lease when he had some financial difficulties related to medical illnesses in the family. One of his children got sick and his father-in-law in another country required financial assistance. The Applicant fell behind on his car payment. He tried to set up an agreement with the creditor to use \$10,000.00 of his 401k to purchase the car outright since he only owed two payments on the lease agreement, but the creditor did not accept the deal.

To further complicate matters, in 2002, the Applicant and his wife were working for the same company. They were both laid off from their jobs because the company folded. The Applicant was out of work from March to December 31, 2002. His wife was unemployed from May to November 2002. (Tr. p. 86). During this period, they suffered serious financial difficulties. They lived on their savings until it ran out, and then began falling behind on most of their monthly bills. The Applicant did manage to continue to pay for private school for their three children. Two of the Applicant's vehicles were repossessed and he had to quit school. The Applicant realizes that he made some poor financial decisions during this period that if he had to do all over again, he would do differently.

In 2003, when both the Applicant and his wife obtained employment, their earnings were much less than they were before. They have had to make major adjustments in their household to live on their reduced income. In regard to the debts they incurred during their period of unemployment, they have set up payment plans with their past due creditors and/or paid off their delinquent debts. They have also made other changes, for example, the Applicant's children now attend public school.

The Applicant admits to incurring each of the debts in the SOR. (*See Applicant's Answer to SOR*). The Applicant was indebted to a dentist in the approximate amount of \$878.00 for an account placed for collection in March 2001. As of August 26, 2004, this debt had not been paid. The Applicant testified that he initially submitted the bill to his insurance company for payment and it was rejected. After discussing the bill with the dentist, with the belief that it should be covered by his insurance, the Applicant resubmitted the bill to his insurance company. The Applicant is awaiting a response. If the bill is not paid through his insurance company, he will pay it.

The Applicant was indebted to a creditor in the approximate amount of \$9,199.57 for the deficiency judgment on an automobile that was repossessed for non-payment in November 2002 and placed in collection. As of February 3, 2005, this debt had not been paid. The Applicant testified that he disputed the debt for over two years. He provided documentation that supports that he finally settled it for \$600.00. (*See Applicant's Exhibits A and E*).

The Applicant was indebted to a creditor in the approximate amount of \$1,836.00 for a delinquent student loan in about October 2003. As of February 3, 2005, this debt had not been paid. Since April 2005, the Applicant has been making payments in the amount of \$163.00 per month toward the debt that he plans to continue until it is paid in full. (*See Applicant's Exhibits B*).

The Applicant was indebted to a bank in the approximate amount of \$2,421.00 for a student loan which has been past due since April 2004. The Applicant is making regular monthly payments of \$113.24 per month which is automatically deducted from his paycheck. This will continue until the debt is paid in full. (*See Applicant's Exhibit C*). This debt, allegation 1(e) of the SOR, is a duplication of the debt listed in 1(f).

The Applicant was indebted to a creditor in the approximate amount of \$1,145.00 for an account placed for collection in about July 2004. As of February 3, 2005, this debt had not been paid. The Applicant has been making bi-weekly payments of \$50.00 towards this debt since July 8, 2005, and plans on continuing this until the debt is paid in full. (*See Applicant's Exhibit D*).

The Applicant is indebted to the IRS in the amount of approximately \$5,000.00 for tax year 2002. As of August 30, 2005, this debt has not been paid. (Tr. p. 78). The Applicant testified that this was the year he was laid off and he withdrew money from his 401K to live on. This resulted in a big tax bill. He is paying this debt in the amount of \$110.00 per month that began at the end of 2004 and will continue until he pays the debt in full. (Tr. p. 79 and Applicant's Post-Hearing Exhibit).

Three witnesses testified on the Applicant's behalf. Two of his friends, who are also coworkers, testified that the Applicant is considered extremely reliable and trustworthy. He is also not a person who has been living beyond his means or spending money recklessly. (Tr. pp. 22-27)

The Applicant's wife testified that the Applicant is a responsible individual. He has been supporting her and her five children from a previous marriage as well as her elderly parents before they passed away. She considers him an excellent human being. (Tr. pp. 31-21).

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 him a 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 predominantly caused by he and his wife's extended period of unemployment from 2002 to 2003. This situation was obviously beyond his control. To complicate matters, the Applicant did not handle his financial affairs in the most responsible manner. The Applicant acknowledges his mistakes and promises to pay his bills in a timely fashion from now on. Since 2003, when he and his wife started working again, the Applicant has made significant strides to pay off his outstanding debts and resolve his financial problems. The Applicant has a repayment schedule in place and has been following it. He plans to continue making regular monthly payments toward the debts until they are paid in full. His present financial situation indicates that he is capable of paying his bills and he realizes that he must be careful to budget his money accordingly. The Applicant understands that he cannot live beyond his means. Evidence of this is the fact that he has taken his children out of private school. The Applicant understands that he must continue to pay his debts on time or his security clearance may be jeopardy. 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.

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