



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-05036

Appearances

For Government: Candace Le'i, Esquire, Department Counsel
For Applicant: *Pro Se*

January 30, 2008

Decision

LOKEY-ANDERSON, Darlene, Administrative Judge:

Applicant submitted his Questionnaire for National Security Positions dated September 14, 2005. On July 18, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 denied or revoked.

The Applicant responded to the SOR on August 17, 2007, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on December 3, 2007. A notice of hearing was issued on December 17, 2007, scheduling the hearing for January 10, 2008. At the hearing the Government presented eight exhibits. The Applicant presented five exhibits and testified on his own behalf. The official transcript (Tr.) was received on January 18, 2008.

FINDINGS OF FACT

The following Findings of Fact are based on the Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 44 years old and has a high school diploma and a year and a half of college. He is employed by a defense contractor as a Security Guard and is seeking to obtain 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). After a complete and thorough review of the evidence in the record, and upon due consideration of the same, 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 a security clearance because he is financially overextended and at risk to engage in illegal acts to generate funds.

The Applicant admits each of the allegations set forth in the SOR. From October 2004 through November 2005, the Applicant was unemployed. During that year he received unemployment benefits but they were not enough to cover his bills. He used credit cards to subsidize his income and became deeper indebted. He tried to make payments to the creditors but only fell farther and farther behind.

From time to time, between 1992 and 2004, for about a three to four years period, the Applicant also helped family members in need, including his sister and a brother by giving them a place to live and food to eat when they could not provide for themselves because of their drug addictions. He also helped a friend who was suffering from the same condition. He co-signed for a vehicle for his nephew who ultimately defaulted on the car loan. All of this took a serious toll on the Applicant's financial situation. The Applicant lost his apartment because he could not afford to pay his rent. It was also about this time that his wife left him. The Applicant moved into a motel where he paid \$50.00 a month. He tried to find employment but was unsuccessful, so he decided to go to school to improve himself. He moved in with a friend and then with his sister.

Credit reports of the Applicant indicate that he is indebted to at least nine separate creditors that include credit cards and personal loans totaling an amount in excess of \$ 52,000.00. (See Government Exhibits 4, 5, 6 and 7). A debt to Citi Financial in the amount of \$4,332.00 remains delinquent and outstanding. A debt to Citi in the amount of \$7,459.00 remains delinquent and outstanding. A debt to Applied CD Bank in the amount of \$3,613.00 remains delinquent and outstanding. A debt to GEMB/CCARC in the amount of \$3,444.00 remains delinquent and outstanding. A debt

to Midland in the amount of \$633.00 remains delinquent and outstanding. A debt to Beneficial/HFC in the amount of \$2,878.00 remains delinquent and outstanding. A debt to AMGNL in the amount of \$1,974.00 remains delinquent and outstanding. A debt to GMAC in the amount of \$25,846.00 remains delinquent and outstanding. A debt to American General Finance in the amount of \$2,001.00 has been paid. A debt to First National CC in the amount of \$478.00 remains delinquent and outstanding.

In November 2005, the Applicant was hired by his current employer. In order to resolve his indebtedness, he tried to get set up a payment plan with his creditors but they refused him and wanted full payment immediately. He tried to obtain a debt consolidation loan and discussed his situation with consumer credit counselors but they wanted some collateral for the loan and the Applicant had anything to offer them.

In an effort to pay his delinquent debts the only way available to him was to approach each debt one by one until all of his delinquent debts are paid in full. The Applicant saved the sum of \$3,600.00 and paid off his debt to American General Finance Company. He is presently saving money to pay off another one of his delinquent debts. The Applicant has also paid other delinquent debts that are not alleged in the SOR. (See Government Exhibit 3). He voluntarily returned to his landlord to pay him the money he owed him. (Tr. p. 53).

The Applicant's personal financial statement dated May 31, 2007, indicates that he is financially incapable of paying the delinquent debts set forth in the SOR. (See Government Exhibit 3).

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

The Applicant completed a Questionnaire for National Security Positions dated September 14, 2005. Question 27(d) asked him if in the last seven years has he had any judgments against him that have not been paid. The Applicant answered, "NO". (See Government Exhibit 1). This was a false response. The Applicant failed to reveal the judgment he had against him in the amount of \$2,001.00 by American General Finance.

Question 28(a) of the same application asked the Applicant if he has ever been over 180 days delinquent on any debts. Question 28(b) asked him if he was currently 90 days delinquent on any debts. The Applicant answered, "NO". (See Government Exhibit 1). This was a false response. The Applicant explained that when he completed the application, he thought that it would prevent him from getting the job if he answered the questions truthfully. (Tr. p. 66).

I find that the Applicant knew about his delinquent debts at the time he completed the application and intentionally sought to conceal them from the Government.

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Conditions that could raise a security concern:

- 19(a) inability or unwillingness to satisfy debts;
- 19(c) a history of not meeting financial obligations.

Conditions that could mitigate security concerns:

None.

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) The deliberate omission, concealment, or falsification of relevant and material 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, a security clearance 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 such access may be involved in instances of financial irresponsibility and 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 him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has been financially irresponsible (Guideline F) and he has been untruthful on his Questionnaire for National Security Positions (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 his security clearance eligibility.

The Applicant is a compassionate, kind and caring individual, but his kindness has contributed to his financial delinquencies. Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case. With respect to his finances, the Applicant has in excess of \$ 52,000.00 in delinquent debt. He has recently paid off one of the debts and plans to continue to pay all of his debts, one by one as he saves the money to do so. However, he has just started to address his delinquent debts and has a long way to go before they are resolved. At the present time, he has not presented

sufficient evidence to demonstrate a track record of financial responsibility or that he has resolved his financial indebtedness.

Upon review of his financial statement, it appears that he has no disposable income at the end of the month to pay his past due bills. There is little evidence of financial rehabilitation at this time. 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. None of the mitigating conditions apply. His financial problems remain current, they are not isolated, and the Applicant has not initiated a prompt, good faith effort to repay his overdue creditors or otherwise resolve his debts. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

With respect to Guideline E, the Applicant deliberately concealed material information from the Government on his security clearance application in response to his financial matters. With the particular evidence that I have been provided, there is no reasonable excuse for his failure to answer the questions truthfully. Consequently, the evidence shows that the Applicant cannot be trusted with the national secrets. Disqualifying Condition *16(a) the deliberate omission, concealment, or falsification of relevant and material 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* applies. None of the mitigating conditions are applicable. I find that the Applicant deliberately sought to conceal material information from the Government and that he cannot be trusted with the national secrets.

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.

DECISION

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

Darlene Lokey Anderson
Administrative Judge