



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



In the matter of:)
)
-----) ISCR Case No. 07-07734
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Candace Lei, Esquire, Department Counsel
For Applicant: *Pro Se*

April 15, 2008

Decision

LOKEY-ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on March 22, 2006. On August 15, 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 29, 2007, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 1, 2007. A notice of hearing was issued on January 29, 2008, and the hearing was scheduled for February 27, 2008. At the hearing the Government presented seven exhibits, referred to as Government Exhibits 1 through 7. The Applicant called one witness and presented twelve exhibits, referred to as Applicant's Exhibits A through L. He also testified on his own behalf. The official transcript (Tr.) was received on March 6, 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 29 years old and has a high school diploma and an Associates Degree. He is employed by a defense contractor as a Flight Simulator Maintenance Technician 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. He was indebted to eight separate creditors totaling approximately \$10,261.00. Credit reports of the Applicant dated June 2007, August 2007, and October 2007 reflect each of these delinquent debts. (See Government Exhibits 2, 3, 4 and 5).

The Applicant was married in 1999, and honorably discharged from the Marine Corps in March 2000. He was unemployed for three months, until June 2000, before he found a job. During the three month period of unemployment, the Applicant claims that he became financially indebted. When he started working he had to take a pay decrease. His annual income at that time was less than \$40,000 and was insufficient to pay off his debts. His wife was employed and contributed to the household expenses until 2003. In 2004, their daughter was born and his wife now stays at home to take care of their child.

In October 2005, the Applicant started working full time for his current employer and his pay has increased over time. The Applicant is also working a part-time job. The Applicant indicates that he now earns \$88,000 annually, and that he has approximately \$11,000 in a 401K.

In February 2008, the Applicant paid off two of the debts listed in the SOR. (See Applicant's Exhibits I and J). He paid off the debt listed in allegation 1(a), to Calvary in the amount of \$183.00 and the debt listed in allegation in 1(c), to Midland in the amount of \$862.00. The Applicant indicates that the debt alleged in 1(b) of the SOR is the same debt alleged in 1(c). He has not yet paid the debts listed in allegations 1(d) through 1(h), which total approximately \$9,500.00. He has no intention to pay several of them 1(e) and 1(f), because they are so old. (Tr. p. 72).

Although not alleged in the SOR, the Applicant is also indebted to the Internal Revenue Service and the state taxing authorities for back taxes. He indicated that he is currently making monthly payments to both the IRS and the state for back due taxes for 2006. (See Applicant's Exhibits G and H). He recently filed his income tax returns for 2007, and he owes the IRS approximately \$1,919.00 and the state \$834.00 for tax year 2007. (Tr. p. 77).

He sought out credit counseling by going to a debt consolidation website. His hopes were to consolidate his debt and make one monthly payment to his creditors. He was told by the credit representative that he is only \$3,209.00 in debt because the debts listed in allegations 1(e), 1(f), and 1(h) are so old and are no longer reflected on his credit report. The fees to use the consolidation service are \$1,100.00 and so the program would not benefit his situation. (Tr. pp. 78-79).

The Applicant took out a loan out against his 401K in the amount of \$3,300 in order to get the transmission on his truck repaired. He is currently in the process of repaying this loan which will be paid off in June 2008. He is considering taking out another loan against it to pay off his delinquent debts. (See Applicant's Exhibit F).

The Applicant submitted a credit report dated August 2007 that does not reflect all of the delinquent debts alleged in the SOR. (See Applicant's Exhibit L).

Letters of recommendation from various individuals who work with the Applicant including his direct supervisor, the company human resource coordinator, a pilot instructor, a co-worker who has the same job as the Applicant, a senior field engineer and others collectively indicate that the Applicant is one of the most trusted and highest qualified Simulator Technicians in the company. He is reliable, responsible and trustworthy and a man of honor and integrity. He is an instrumental asset to the facility and his background, expertise and knowledge is difficult to obtain. (See Applicant's Exhibit K).

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.

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 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). 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 evidence shows that the Applicant has recently paid two of the delinquent debts listed in the SOR. In regard to the remaining debts, they are still outstanding. The Applicant has not contacted the creditors nor has he set up a payment plan to resolve the debts. Although several of the debts are old, meaning they were incurred and became delinquent over seven years ago, all but one of his credit reports still reflect them as owing. He has not contacted the credit reporting agencies to dispute the debts. Several of the debts he has no intent to pay. He remains excessively indebted in an amount in excess of \$9,500.00.

Upon review of his financial report, it appears that he has some disposable income at the end of the month to pay his delinquent bills. 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* are applicable. None of

the mitigating factors 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.

I have also considered the “whole person concept” in evaluating the Applicant’s eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole person assessment of questionable judgement, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard classified information. Until recently, the Applicant has ignored his delinquent debts. He paid off two of them and then just left the others. It appears that he is waiting for the others to fall off of his credit report in hopes that he does not have to pay them.

This Applicant has not demonstrated that he is trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

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 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: Against the Applicant.

- Subpara. 1.a.: For the Applicant.
- Subpara. 1.b.: For the Applicant.
- Subpara. 1.c.: For 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.

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