



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-12296
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Department Counsel
For Applicant: *Pro Se*

July 10, 2008

Decision

LOKEY-ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on March 2, 2007. On February 12, 2008, 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 March 14, 2008, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on April 29, 2008. A notice of hearing was issued on May 2, 2008, and the hearing was scheduled for May 28, 2008. At the hearing the Government presented seven exhibits, referred to as Government Exhibits 1 through 7. The Applicant presented four exhibits, referred to as Applicant's Exhibits A through D. He also testified on his own behalf. The official transcript (Tr.) was received on June 5, 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 48 years old and has an Associates of Arts Degree in Electrical Engineering. He is employed by a defense contractor as a Quality Engineer 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 under this guideline. He is indebted to four separate creditors totalling approximately \$ 20,888.00. Credit reports of the Applicant dated March 17, 2007, August 29, 2007, April 28, 2008 and May 28, 2008, reflect each of these delinquent debts. (Government Exhibits 4, 5, 6 and 7). The Applicant indicates that after researching the state Code of Civil Procedure on his own, he believes that he no longer owes the debts and has no intent to pay them. (Government Exhibit 3). He states that, "Within four years, an action upon a contract, obligation, liability, founded upon an instrument in writing provided in Section 336(a) of the Code", basically releases him from liability for the accounts or debts. (Tr. p. 23). However, if he at some point determines that he is liable for the debts, he will pay them.

Due to periods of financial hardship: when his employment fluctuated up and down, and overtime was unexpectedly cut back, and when his daughter and niece defaulted on car loans that the Applicant had co-signed, the Applicant was unable to pay all of his debts and some of his debts became delinquent. He had to make hard decisions, to use his income to support his family instead of paying his bills.

A debt owed to First Premiere in the amount of \$500.00 remains outstanding. Although the Applicant never had this credit card, his wife did, and they may have had a joint account. The Applicant recently contacted the creditor who told him that there was no record of the debt. However, the debt is reflected on the Applicant's most recent credit report dated May 28, 2008. He states that he is currently disputing the debt with all three credit agencies. (Applicant Exhibit D).

A debt to Americredit in the amount of \$5,696.00 for an account that was charged off in August 2002 remains owing. Another debt to Americredit in the amount of \$4,567.00 for an account charged off in September 2002 remains owing. A debt to Balboa Thrift in the amount of \$10,125.00 for an account charged off in February 2003

remains owing. The Applicant explained that on three separate occasions, three vehicles that he had purchased were voluntarily repossessed because he could no longer afford to make the payments. On one of those occasions he had co-signed on the loan for his daughter, on another, he had co-signed for his niece. The Applicant is disputing all three car repossession debts with the credit agencies and was told that they will continue on his record until April 2009. (Applicant Exhibit D).

The Government requested that the debt set forth in allegation 1(e) be withdrawn and presented no evidence to support the allegation. Accordingly allegation 1(e) is found for the Applicant.

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 admits each of the allegations set forth under this guideline. (See Applicant's Addendum to Answer to SOR/Applicant's Exhibit D). The Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) dated March 2, 2007. Section 28 (a) asked him if in the last 7 years, has he been over 180 days delinquent on any debts. The Applicant responded, "NO". (Government Exhibit 1). This was a false answer. Question 28(b) of the same application asked him if he was currently over 90 days delinquent on any debts. The Applicant again answered, "NO". (Government Exhibit 1). This was also a false answer. The Applicant stated that he should have answered "YES" to both questions but because they were old debts, he did not feel that they could be used against him. He now realizes that he should have been more forthcoming. He stated that he would never jeopardize the national secrets.

Performance Appraisals of the Applicant for 2007-2008 reflect that his overall work performance "exceeds performance requirements". (Applicant's Exhibit C).

He states that there is nothing in his background that could be used to blackmail or coerce him into improperly providing proprietary or classified information. He had a DoD clearance with a NATO attachment at a prior company for 16 years and understands the serious nature of safeguarding classified information. He loves his family, country and the company he works for, and would never jeopardize that standing. (Applicant's Exhibit D).

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.© 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.

Conditions 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.

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) and has falsified material facts on his security clearance application (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 evidence shows that the Applicant has over extended himself financially on more than one occasion. As a result, he has fallen short in paying his debts. Now, he asserts that the state Code of Civil Procedure gives him the ability to walk away from the debts without paying them. The Government asserts that the state Code of Civil Procedure does not apply in this case. Whether or not the Civil Code allows the Applicant the ability to walk away from his debts because they are old, under state law, is not relevant here. The ultimate decision here is whether the Applicant has demonstrated a willingness to satisfy his debts, and shown a history of meeting his financial obligations. Clearly, he has not. The Applicant has ignored his delinquent debts and remains indebted in the amount of approximately \$ 20,000.00.

Upon review of his financial report, it appears that he has little in 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© *a history of not meeting financial obligations* are applicable. 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.

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. The Applicant has not even begun the process of financial rehabilitation and he has a long way to go before his financial affairs are in order.

In addition, the Applicant intentionally failed to answer questions 28(a) and 28(b) accurately on his Electronic Questionnaire for Investigations Processing. He deliberately failed to acknowledge his delinquent debts in response to the questions because he did not believe that they could be held over him. It was not the Applicant's place to make the determination as to whether the delinquent debts could be held over him, he was simply to answer the questions truthfully, which he did not do. Under Guideline E (Personal Conduct), Disqualifying Conditions 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* applies. None of the mitigating conditions are applicable. Accordingly, I find that the Applicant intentionally sought to conceal material information from the Government on his security clearance application.

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) and Guideline E (Personal Conduct).

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 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.: For 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