



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-12779
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer Goldstein, Esquire, Department Counsel
For Applicant: *Pro Se*

April 8, 2008

Decision

Lokey-Anderson, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on January 29, 2007. On November 26, 2007, 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 December 9, 2007, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on February 4, 2008. A notice of hearing was issued on February 11, 2008, scheduling the hearing for March 5, 2008. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6. The Applicant presented five exhibits, referred to as Applicant's Exhibits A through E. The Applicant also testified on his own behalf. The record remained open until March 26, 2008, to allow the Applicant to submit additional supporting documentation. The Applicant submitted nine Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits 1 through 9. The official transcript (Tr.) was received on March 14, 2008.

FINDINGS OF FACT

The Applicant is 46 years old and married. He has a high school diploma. He is employed by a defense contractor as an Armed Security Officer 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). 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 of having to engage in illegal acts to generate funds.

Since 2000, the Applicant has had a history of not meeting his financial obligations. His financial difficulties were caused by his inability to obtain a decent paying job and by spending beyond his means. The Applicant has had to take jobs that did not provide adequate financial support for his family. Even so, he tried to provide for his family the best he knew how. He wanted them to live in a good area, a nice house, and he spent money that he did not have. As a result, the Applicant became excessively indebted. At one point, the Applicant was renting a four bedroom house for his family and paying \$1,500.00 a month for rent. He now realizes that he can no longer afford that lifestyle.

The Applicant admits each of the debts set forth in the Statement of Reasons that include seventeen separate creditors totaling approximately \$13,000.00. In October 2007, the Applicant's monthly net income of \$2,494.00 was insufficient to cover his monthly living expenses of \$2,507.00. (See Government Exhibit 5). At that time, in addition to his salary the Applicant was receiving \$800.00 from boarders.

In an effort to resolve his indebtedness, the Applicant contacted a consumer credit counselor in October 2007, to assist in paying off his outstanding debts. The consumer counselor set up a payment plan as requested by the Applicant. The Applicant took no immediate action towards his debts at the time, because he did not have the money to do so. In December 2007, the Applicant started making payments according to the plan which required at that time that he pay \$202.00 per month. He made three payments under the plan prior to the hearing. Unbeknownst to the Applicant, the consumer credit counselor did not include all of the debts set forth in the SOR. Furthermore, the records from the consumer credit counselor do not show any reduction in the debt owed by the Applicant considering the three payments he made. The Applicant was given an opportunity to revise the payment plan or question the credit counselor concerning this documentation.

For the past year and three months, the Applicant has worked for his current employer. In his opinion, the job pays well, \$1,500.00 a month, and has enabled him to pay his bills and support his family. The Applicant also realizes the importance of

paying his bills on time. He has significantly reduced his overhead and moved his family into a small apartment where the rent is \$950.00 in order to free up money to pay his delinquent bills. He has used his income tax refund to pay off his some of his bills. He is also anticipating a part-time job that will pay him an extra \$1,200.00 a month that will be used to pay his delinquent debts.

A civil judgment owed to Rialto Venture in the amount of \$751.00 cannot be located by the court clerk. (See Applicant's Post-Hearing Exhibit 1). A civil judgment owed to Robert Striker in the amount of \$3,712.00 is included in the payment schedule and is being paid. (See Applicant's Post-Hearing Exhibit 2). A debt owed to Asset Acceptance in the amount of \$456.00 is included in the payment schedule and is being paid. (See Applicant's Post-Hearing Exhibit 2). A debt owed to Direct T.V. in the amount of \$228.00 was paid on March 3, 2008. (See Applicant's Post-Hearing Exhibit 3). A debt owed to Pac Bell in the amount of \$531.00 is included in the payment schedule and is being paid. (See Applicant's Post-Hearing Exhibit 2). A debt owed to SBC California in the amount of \$102.00 was paid on March 3, 2008. (See Applicant's Post-Hearing Exhibit 3). A debt owed to Capital One Bank in the amount of \$1,708.00 is included in the payment schedule and is being paid. (See Applicant's Post-Hearing Exhibit 2). A debt owed to Collection Company of American in the amount of \$208.00 is included in the payment schedule and is being paid. (See Applicant's Post-Hearing Exhibit 2). A debt owed to Credit Management in the amount of \$119.00 is included in the payment schedule and is being paid. (See Applicant's Post-Hearing Exhibit 2). A debt owed to MS Wireless in the amount of \$100.00 is included in the payment schedule and is being paid. (See Applicant's Post-Hearing Exhibit 2). A debt owed to First Premier in the amount of \$407.00 was paid on February 28, 2008. (See Applicant's Post-Hearing Exhibit 4). A debt owed to Elite Towing in the amount of \$2,048.00 is included in the payment schedule and is being paid. (See Applicant's Post-Hearing Exhibit 2). A debt owed to Reliant Recovery Services in the amount of \$720.00 is included in the payment schedule and is being paid. (See Applicant's Post-Hearing Exhibit 2). A debt owed to Adelpia Ontario in the amount of \$118.00 is included in the payment schedule and is being paid. (See Applicant's Post-Hearing Exhibit 2). A debt owed to US Asset Management in the amount of \$205.00 is included in the payment schedule and is being paid. (See Applicant's Post-Hearing Exhibit 2). A debt owed to GC Services in the amount of \$834.00 has been written off. (See Applicant's Exhibit 1). A debt owed to Golden State in the amount of \$1,057.00 is included in the payment schedule and is being paid. (See Applicant's Post-Hearing Exhibit 2).

Applicant's Post-Hearing Exhibit contains information concerning each of the delinquent debts set forth in the SOR. Each of the delinquent debts listed in the SOR, except the court judgment listed in allegation 1(a), have either been paid off, or how been included in the debt payment worksheet prepared by the consumer credit counselor and are being paid on a monthly basis. (See Applicant's Post-Hearing Exhibit 2). The Applicant's payment scheduled was revised and he is now required to pay \$351.00 per month under the plan. He made his first payment of \$351.00 under the revised schedule on March 14, 2008. (See Applicant's Post-Hearing Exhibit 6). With

regard to the court judgment, the Applicant was told by the clerk of the court that because the judgment was so old, (1995), she was no longer able to retrieve a record of the judgment. The credit consumer counselor then advised the Applicant that because the debt is over seven years old, it is supposed to be removed from his credit report. The credit counselor plans to assist the Applicant in getting this judgment removed from his credit report. The Applicant also plans to continue to make regular monthly payments under the payment plan until all of his other debts are paid in full.

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.

Conditions that could raise a security concern:

19.(a) inability or unwillingness to satisfy debts;

19.(c) a history of not meeting financial obligation;

Conditions that could mitigate security concerns:

20.(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

20.(d) the individual initiated a good-faith effort to repay overdue 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 his 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.

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. The Applicant's poor financial history was caused by a combination of his inability to obtain a decent paying job and his spending beyond his means. With regard to his delinquent indebtedness, the Applicant has either paid off the debt, or he has set up a payment plan and is making regular monthly payments toward resolving them. He plans to continue paying the debts until they are paid in full. In addition, he has reduced his spending and has taken on a second part-time job to get these bills paid as soon as possible. He now understands the importance of paying his bills on time and not living beyond his means. Under the circumstances, he has made a good faith effort to resolve his indebtedness, and there is evidence of financial rehabilitation. The Applicant has demonstrated that he can properly handle his financial affairs. In the event that the Applicant does not continue to pay his delinquent debts according to the payment plan or sooner if possible, his security clearance will be in immediate jeopardy.

Under Guideline F (Financial Considerations), Disqualifying Conditions 19.(a) *inability or unwillingness to satisfy debts*; 19.(c) *a history of not meeting financial obligation*; 19.(e) *consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis* apply. Mitigating Conditions 20.(c) *the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control* and 20.(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* also apply.

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 good judgement, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, and/or other characteristics indicating that the person may properly safeguard classified information.

This Applicant has changed his irresponsible ways. He is living within his means and is paying his delinquent debts. He has demonstrated that he is trustworthy, and

that he meets the eligibility requirements for access to classified information. 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 for 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.
- Subpara. 1.k.: For the Applicant.
- Subpara. 1.l.: For the Applicant.
- Subpara. 1.m.: For the Applicant.
- Subpara. 1.n.: For the Applicant.
- Subpara. 1.o.: For the Applicant.
- Subpara. 1.p.: For the Applicant.
- Subpara. 1.q.: For the Applicant.
- Subpara. 1.r.: 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

