



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



In the matter of:)
)
-----) ISCR Case No. 07-15298
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: D. Michael Lyles, Department Counsel
For Applicant: *Pro Se*

March 30, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Questionnaire for Investigations Processing dated January 27, 2006. On April 9, 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 in writing on September 30, 2008, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on December 3, 2008. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on December 16, 2008, and he submitted no reply. The case was assigned to another Administrative Judge on February 13, 2009, and was assigned to the undersigned for resolution on March 16, 2009.

FINDINGS OF FACT

The following Findings of Fact are based on the Applicant's Answer to the SOR, the FORM and the exhibits. The Applicant is 33 years old and married. He is employed by a defense contractor 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 all of the allegations set forth in the SOR under this guideline. Credit reports of the Applicant dated March 14, 2006, and November 26, 2007, indicate that he remains indebted to sixteen creditors in the amount of approximately \$16,585.00. (Government Exhibits 10 and 11). The delinquent accounts comprise debt associated with personal and household expenses, loans, credit cards, medical services, utilities and back child support.

The Applicant attributes his financial problems to "poor budgeting skills" after he separated from the Air Force in 2000. From 2000-2003, he was employed but did not earn enough money to cover his expenses. He claims that his former wife opened some financial accounts and included him on the accounts without his knowledge. They divorced in October 2001. He states that his new job increased his salary sufficient to repay his delinquent debts and that he has developed a budget which shows how he plans to cover his expenses and debt repayments. Applicant did not to submit any documentation to support his claim.

Applicant also claims that he and his current wife have made a mutual decision to move into a small apartment on top of her store in order to cut down on their expenses, get current with their bills, and then begin the long process of paying back their old delinquent debts. (Applicant's Answer to SOR).

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.

Paragraph 3 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for a security clearance because he has engaged in criminal activity which creates doubt about a person's judgment, reliability, and trustworthiness.

By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

The Applicant completed an Electronic Questionnaire for Investigations Processing dated January 27, 2006. Question 23(f) of the application asked the Applicant if in the last seven years he has been arrested for, charged with, or convicted of any offense(s) not listed listed in response to a, b, c, d, or e. The Applicant answered, "NO". (Government Exhibit 4). This was a false answer. Applicant failed to list that he was arrested twice in 2002 for Contempt of Court, Failure to Pay Child Support/comply with Court Order. (Government Exhibit 5).

Question 24(a) of the same questionnaire asked the Applicant if since the age of sixteen or in the last seven years, whichever is shorter, has he illegally used any controlled substance, for example marijuana, cocaine, crack cocaine, hashish, narcotics, etc. The Applicant answered "NO". (Government Exhibit 4). This was a false answer. Applicant failed to disclose that he used marijuana at least twice in February 2000, after he received his General Discharge from the United States Air Force. (Government Exhibit 5).

Question 27(b) of the same questionnaire asked the Applicant if in the last seven years has he had his wages garnished or had any property repossessed for any reason. The applicant answered, "NO". (Government Exhibit 4). This was a false answer. He failed to list the fact that his car was repossessed in early 2002. (Government Exhibit 5).

Question 28(a) of the same questionnaire asked the Applicant if in the last seven years has he been over 180 days delinquent on any debts. The Applicant answered, "NO". (Government Exhibit 4). This was a false answer. He failed to list that in the last seven years he had been over 180 days delinquent on fourteen of the seventeen debts listed in the SOR. (Government Exhibit 5).

Question 28(b) of the same questionnaire asked the Applicant if he was currently over 90 days delinquent on any debts. The Applicant answered, "NO". (Government Exhibit 4). This was a false answer. He failed to list that at the time he filled out the questionnaire he was over 90 days delinquent on fifteen of the seventeen debts listed in the SOR. (Government Exhibit 5).

The Applicant admits that he was "wrong to put NO for all of those questions". He states that he was "rushing though the paperwork" so that he could get a better paying job overseas to earn a better salary that would allow him to pay his delinquent debt. (Government Exhibit 3).

I find that the Applicant deliberately failed to answer the questions accurately on the questionnaire because he intentionally wanted to conceal the truth from the government. By deliberately providing false information to the Government on this questionnaire, the Applicant violated federal law, Title 18, United States Code, Section 1001.

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.

Guideline J (Criminal Conduct)

30(a) *The Concern.* Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or unwillingness to comply with laws, rules and regulations.

Conditions that could raise a security concern:

31(a) a single serious crime or multiple lesser offenses;

31(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

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, dishonesty and criminal conduct 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), that he has been untruthful on his Questionnaire for Investigations Processing (Guideline E) and that he violated federal law, Title 18, United States Code, Section 1001, when he did so (Guideline J). 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.

With respect to his finances, the Applicant has in excess of \$16,500.00 in delinquent debt. The record is void as to any evidence of mitigation. He has not paid any of his delinquent debts although he indicates that he recently set up a payment plan. Giving him the benefit of the doubt, it can be said that he just started the financial rehabilitation process, but he has a long way to go before his delinquent debts 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 little 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 and they are not isolated. The Applicant had 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 arrest record, drug involvement and financial matters. With the particular evidence that I have been provided, there is no reasonable excuse for his failure to answer the questions truthfully. He was obviously not careful or serious when he was filling out the answering to the questions on the application. 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.

By deliberately concealing material information from the Government, the Applicant violated Federal law, Title 18, United States Code, Section 1001. Disqualifying Condition *31(a) a single serious crime or multiple lesser offenses* and *31(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted* apply. None of the mitigating conditions are applicable. Therefore, Guideline J is also found against him.

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.

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, 2 and 3 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.
- Subpara. 1.l.: Against the Applicant.
- Subpara. 1.m.: Against the Applicant.
- Subpara. 1.n.: Against the Applicant.
- Subpara. 1.o.: Against the Applicant.
- Subpara. 1.p.: Against the Applicant.
- Subpara. 1.q.: Against the Applicant.
- Subpara. 1.r.: Against the Applicant.

Paragraph 2: Against the Applicant.

- Subpara. 2.a.: Against the Applicant.
- Subpara. 2.b.: Against the Applicant.
- Subpara. 2.c.: Against the Applicant.
- Subpara. 2.d.: Against the Applicant.
- Subpara. 2.e.: Against the Applicant.

Paragraph 3: Against the Applicant.

- Subpara. 3.a.: 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