



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-15823
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

May 27, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on March 27, 2006. (Government Exhibit 1). On November 7, 2008, 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.

Applicant answered the SOR in writing on November 7, 2008, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on January 22, 2009. A notice of hearing was originally issued on February 5, 2009, scheduling the hearing for February 27, 2009. The matter was continued based upon a scheduling conflict. An amended notice of hearing was issued on February 23, 2009, scheduling the hearing for March 3, 2009. Applicant requested a second continuance based upon good cause that was granted. An amended notice of hearing was issued on February 26, 2009, scheduling the hearing for March 10, 2009. Due to difficulties with the court reporting contract, per agency instruction, the hearing was continued. A notice of hearing was issued on March 11, 2009, scheduling the

hearing for April 10, 2009. Applicant requested a continuance based upon good cause that was granted. Based upon Applicant's medical reasons, another continuance was granted. A notice of hearing was issued on April 9, 2009, scheduling the hearing for May 5, 2009. At the hearing, the Government offered seven exhibits, referred to as Government Exhibits 1 through 7, which were received without objection. Applicant offered no exhibits, but testified on his own behalf. The record remained open until close of business on May 19, 2009, to allow the Applicant to submit documentation on his behalf. Applicant failed to submit any additional documentation. The transcript of the hearing (Tr.) was received on May 14, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 35 years old and has an Advanced Technical Certificate in Computer Technology. He is employed by a defense contractor as an Engineer Technician IV 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.

The Applicant admits fifty-four of the fifty-five debts set forth in the SOR under this guideline. These debts were incurred between 1996 and the present, and total approximately \$20,000.00. Each of the debts are reflected in the Applicant's Credit Reports dated January 31, 2008, January 13, 2009 and May 4, 2009. (Government Exhibits 5, 6 and 7). Even the smaller debts remain owing. Applicant testified that he has recently tried to re-establish himself with his creditors by trying to pay them what he could afford. (Tr. p. 33). He contends that all of these debts were incurred as a result of financial hardship and not extravagant spending. (Tr. p. 39).

The Applicant explained that he and his wife had their first child in 1997, at a very young age. They were young, naive and did not handle their money correctly. (Tr. p. 27). His first child, a son, was born with a disability, known as "Asperger's Autism". This condition caused them to incur medical debt that they did not expect. Medical only covers between 60 to 80 percent of his son's medical expenses. (Tr. p. 70). The Applicant is responsible for the rest.

In 1998, while the Applicant was working a menial job, he injured his back on the job. This caused more unexpected medical bills. In December 1999, he was placed on

workers compensation for three years due to his injury. (Tr. p. 30). The injury to his lower spine ultimately required that he have a back fusion. It was financially difficult to support his family, but they managed.

In December 3, 2002, the Applicant was allowed to go back to work. By this time, he and his wife had three children. They continued to struggle financially. In 2005, the Applicant began working for his current employer. Since then, he has not been able address his delinquent debts.

Two years ago, the Applicant underwent extensive medical testing for cancer and HIV, and it was determined that he had a serious infection in his lymph nodes. This caused him to be hospitalized and lose 67 pounds in a matter of six weeks. (Tr. p. 37). He incurred more unexpected medical bills and caused him to fall deeper in debt.

Recently, the Applicant's wife underwent a hysterectomy. This caused more unexpected medical bills. Despite this, the Applicant recently took out a loan against his 401(k), known as a "hardship loan" in the amount of \$7,084.00, in order to address some of his delinquent debts. (Tr. p. 38). He has been diligently contacting each of his creditors and setting up payment plans within his budget to pay his debt.

Applicant testified that he would never do anything to jeopardize the Government, his country, his job, or the national security. (Tr. p. 45).

Due to his son's medical condition, his wife does not work outside of the home. Applicant now earns approximately \$51,000.00 annually. (Tr. p. 33).

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;

19.(e) consistent spending beyond ones means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Conditions that could mitigate security concerns:

20.(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

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 her 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 not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case. It is recognized and I sympathize with the Applicant's history of continual medical problems in the family that have been the main cause of his financial problems. Particularly, unexpected medical bills brought on by his son's Asperger Autism, his three year period on disability with his back, his lymph node infection and his wife's recent hysterectomy, have all been contributing factors to his financial demise. Not to mention the fact that, prior to his current employment, he worked menial jobs that did not pay well. Since 2005, he states that he has demonstrated outstanding work performance on the job. He also states that he has been promoted and given a wage increase on a consistent basis. In order to resolve his past due indebtedness, he states that he has recently taken out a hardship loan against his 401(k) and is hoping to

pay some of his delinquent debt. At the present time, however, he has failed to present any documentary evidence to support his testimony. He has failed to demonstrate that he has been able to address any of his delinquent debts. Furthermore, the Applicant was given the opportunity to provide some documentary evidence, such as medical records for those effected family members, letters of recommendation from supervisors and coworkers and performance evaluations, to name a few. The record remained open after the hearing for two weeks for receipt of such documentation. The Applicant failed to submit any documentation. Under the circumstances, he has not made a good faith effort to resolve his indebtedness, and there is insufficient evidence of financial rehabilitation. The Applicant has not demonstrated that he can properly handle his financial affairs.

Under Guideline F (Financial Considerations), Disqualifying Conditions 19.(a) *inability or unwillingness to satisfy debts*; and 19.(c) *a history of not meeting financial obligation* apply. However, Mitigating Condition 20.(b) *the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances* applies but is not sufficient to mitigate the extent of his indebtedness. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

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 poor judgement, untrustworthiness, unreliability, and an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

I have considered all of the evidence presented, and it does not sufficiently mitigate the adverse information brought against him. On balance, it is concluded that the Applicant has not 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 SOR.

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.: For 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.
Subpara. 1.s.: Against the Applicant.
Subpara. 1.t.: Against the Applicant.
Subpara. 1.u.: Against the Applicant.
Subpara. 1.v.: Against the Applicant.
Subpara. 1.w.: Against the Applicant.
Subpara. 1.x.: Against the Applicant.
Subpara. 1.y.: Against the Applicant.
Subpara. 1.z.: Against the Applicant.
Subpara. 1.aa.: Against the Applicant.
Subpara. 1.bb.: Against the Applicant.
Subpara. 1.cc.: Against the Applicant.
Subpara. 1.dd.: Against the Applicant.
Subpara. 1.ee.: Against the Applicant.
Subpara. 1.ff.: Against the Applicant.
Subpara. 1.gg.: Against the Applicant.
Subpara. 1.hh.: Against the Applicant.
Subpara. 1.ii.: Against the Applicant.
Subpara. 1.jj.: Against the Applicant.
Subpara. 1.kk.: Against the Applicant.
Subpara. 1.ll.: Against the Applicant.
Subpara. 1.mm.: Against the Applicant.
Subpara. 1.nn.: Against the Applicant.
Subpara. 1.oo.: Against the Applicant.
Subpara. 1.pp.: Against the Applicant.
Subpara. 1.qq.: For the Applicant.
Subpara. 1.rr.: Against the Applicant.
Subpara. 1.ss.: Against the Applicant.
Subpara. 1.tt.: Against the Applicant.
Subpara. 1.uu.: Against the Applicant.
Subpara. 1.vv.: Against the Applicant.
Subpara. 1.ww.: Against the Applicant.
Subpara. 1.xx.: Against the Applicant.
Subpara. 1.yy.: Against the Applicant.

Subpara. 1.zz.: Against the Applicant.
Subpara. 1.aa.: Against the Applicant.
Subpara. 1.bb.: Against the Applicant.
Subpara. 1.cc.: Against the Applicant.

DECISION

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

Darlene Lokey Anderson
Administrative Judge