



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-00529
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer I. Goldstein 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 May 23, 2007. On March 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 24, 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 12, 2008, and the hearing was scheduled for June 9, 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 17, 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 62 years old and has a Masters in Information Technology, and is currently working on his PhD. He is employed by a defense contractor as a Senior Business Systems Analyst 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 six separate creditors totalling approximately \$ 49,000.00. Credit reports of the Applicant dated April 16, 2008, February 12, 2008, January 30, 2008, and June 14, 2007, reflect each of these delinquent debts. (See Government Exhibits 3, 4, 5, and 6).

From 1964 to 1974, the Applicant was in the Air Force and held a DoD security clearance. He has been divorced twice, and has one adult child. Over time, the Applicant ran up his credit cards for personal usage, including travel expenses, and incurred a substantial amount of debt. In 2000, he was diagnosed with prostate cancer and was treated for his disease until 2003. He had medical insurance, but some of the co-pays for medication he was required to pay himself. In October 2006, he was laid off from his job for six weeks. Although he received a severance package from his employer, he did not use the money to pay his bills because he was unsure how long he would be unemployed. At that time he contacted his creditors and also a consumer credit counsellor to assist him in consolidating his debt. (See Applicant's Exhibits B, C and D). Several of the creditors refused to consolidate or negotiate a settlement and have demanded payment in full.

In September 2007, with the assistance of the consumer credit counsellor, the Applicant was able to start a payment plan toward a debt owed to a creditor in the amount of \$24,000.00. The agreement requires that the Applicant pay the creditor \$418.00 monthly until the debt is completely paid off, which is scheduled to take about three years. In January 2008, the Applicant started making monthly payments in the amount of \$500.00 to another creditor for a debt owed in the amount of \$5,948.00. (See Applicant's Exhibit A).

At least three other delinquent debts totalling in excess of at least \$20,000.00 remain outstanding and have not been addressed. A debt owed to a creditor in the amount of \$5,344.00, a debt owed to a creditor in the amount of \$8,892.00, and a debt owed to a creditor in the amount of \$7,289.00 remain outstanding.

The Applicant is current with all of his regular monthly expenses. He has a 401(k) with \$82,000.00 and a savings account with approximately \$500.00. The Applicant has destroyed all of his credit cards, except for a gas card that he pays on a monthly basis.

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.

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 although the Applicant suffered a serious illness from 2000-2003, and a job lay-off in 2006, the impact of these events did not adversely effect his financial situation. He had medical insurance to pay most of his medical bills, and was given a severance package when he was laid off, equal to his pay for the period he was out of work. In this case, the Applicant abused his credit cards and incurred a substantial amount of debt that he initially could not afford to pay, and later chose not to pay. Although he contacted a consumer credit counsellor for assistance, they have only been able to help him with two of his creditors. He remains indebted to at least three, possibly four other creditors in the amount of at least \$20,000.00 that he has not begun to address. Furthermore, the Applicant has resources that he could use to pay his delinquent debts, including a savings account and a 401(k) but has chosen not to use them.

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 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 only just begun the process of financial rehabilitation and he has a long way to go before his financial affairs are in order.

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.: 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.

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