



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



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| In the matter of: |) | |
| _____ |) | |
| SSN: _____ |) | ISCR Case No. 08-01782 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Melvin A. Howry, Department Counsel
For Applicant: *Pro Se*

September 22, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) dated May 25, 2006. (Government Exhibit 1). On February 3, 2009, 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.

Applicant answered the SOR in writing on March 11, 2009, and June 26, 2009, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on July 2, 2009. A notice of hearing was issued on July 6, 2009, scheduling the hearing for August 11, 2009. Applicant requested a continuance that was granted and the hearing was rescheduled for August 27, 2009. The Government offered ten exhibits, referred to as Government Exhibits 1 through 10,

which were received without objection. Applicant offered two exhibits, referred to as Applicant's Exhibits A and B, which were received without objection. He also testified on his own behalf. The record remained open until close of business on September 10, 2009, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted eight Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits 1 through 8, which were admitted without objection. The transcript of the hearing (Tr.) was received on September 4, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

The following Findings of Fact are based on the Applicant's Answer to the SOR, his testimony and the exhibits. The Applicant is 48 years old and has a Bachelor's Degree in Electrical Engineering and is pursuing his Masters. He is employed by a defense contractor as an Electrical 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 to each of the allegations set forth in the SOR, namely that he was indebted in the amount of approximately \$17,000.00 in delinquent debt. Credit Reports of the Applicant dated August 22, 2002; May 20, 2008; December 10, 2008; April 3, 2009; and August 20, 2009; collectively reflect each of the outstanding debts listed in the SOR. (Government Exhibits 4, 5, 7, 8 and 10). The Applicant has been employed for a defense contractor since September 2000.

The Applicant and his wife were married in 1998. At that time, their financial credit had no blemishes. Newly married, they were confronted with the costs of starting up a new home, and relocating from out of state to start new jobs. They had planned on two incomes to support their move. Unexpectedly, Applicant's wife fell ill and was diagnosed with Manic Bipolar disorder. She went through several years of instability where she was hospitalized a number of times. (Applicant's Post-Hearing Exhibit 7). Part of her illness involved her charging up credit cards without considering the consequences of her actions. The Applicant became financially overextended. The original delinquent debt totaled approximately \$36,000.00. Applicant has worked hard to resolve all but two of the debts.

The Applicant explained that prior to his wife's diagnosis, he and his wife entered into an agreement with an adoption agency to attend parenting classes in hopes of adopting a child some day. (Applicant's Exhibit A). Applicant and his wife never completed the program because she became mentally ill, and they decided to rethink the idea of adoption. As of December 2008, a debt in the amount of \$1,150.00 for the cost of the classes remained owing. The Applicant failed to pay the debt and it was written off by the creditor. Applicant hired a consumer credit counselor who has contacted the credit reporting agencies and requested that the debt be removed from his credit report. (Applicant's Post-Hearing Exhibit 4).

As of December 2008, a debt in the amount of \$126.00 owed to a dentist for services was outstanding. Applicant initially thought the debt should have been paid by his insurance but eventually gave in and made the payment to the dentist. By that time, however, the debt had been placed into collection and was never credited to the proper account. Applicant submitted a copy of the receipt for payment indicating that the balance is now zero. (Applicant's Post-Hearing Exhibit 5). The debt has been removed from the Applicant's credit report.

As of December 2008, a debt in the amount of \$16,736.00 owed to a car company remained owing. The Applicant explained that when his wife started spending money they could not afford to spend, the Applicant took the car off the road and stopped paying for insurance. Although he continued to make the payments, he was so far upside down on the loan, he decided to voluntarily turn in the car in 2003. Applicant contends that the statute of limitations has run and therefore he is not legally obligated under the law of that state to pay the debt. Applicant also contends that even though the statute has run, he is still trying to make good on the loan. Applicant testified that he tried to get a bank loan to pay off the car or a personal loan from family members but has not been successful. The Applicant is currently trying to get the creditor to settle for \$8,368.00, which is half of what he originally owed on the account. (Applicant's Exhibit 6).

The Applicant explained that he has done his best to manage he and his wife's debts. He has tried to stay current, and has looked for loan consolidation, in order to resolve them more efficiently. (Tr. p. 44). He is current with all of his regular monthly expenses and plans to keep it that way. (Applicant's Post-Hearing Exhibit 8).

An undated letter of reference by an individual, who has worked closely with the Applicant since 1995, indicates that he considers the Applicant to be trustworthy, reliable and capable. Applicant is said to be sober minded and that he has been a solid technical contributor to the work effort. (Applicant's Exhibit B).

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:

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:

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, extent, 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 extent to which participation is voluntary
- f. The presence or absence of rehabilitation and other permanent 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 also shows that circumstances largely beyond the Applicant's control contributed to his financial indebtedness. An out of state job relocation and the cost of starting up a new home might have been expected, but his wife's unexpected mental illness and its ramifications, the unexpected medical expenses associated with her illness, and her inability to work, primarily caused their financial problems. Since then, the Applicant has paid off many of his delinquent debts. Recently he has hired a credit consumer counselor to further assist him in cleaning up his credit. He must continue to demonstrate financial responsibility. Under the circumstances, the Applicant has done his best to be responsible and has made a good faith effort to resolve his debts. He realizes that he must continue to pay off his delinquent debt and live within his means in order to pay his bills on time. In the event that he has any future financial problems, his security clearance would immediately be in jeopardy. However, at the present time, 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.

Under Guideline F, Disqualifying Conditions *19(a) inability or unwillingness to satisfy debts* and, *19(c) a history of not meeting financial obligations* apply. However, Mitigating Conditions *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, 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, his favourable character references and 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, or other characteristics indicating that the person may properly safeguard classified information.

There is evidence of financial rehabilitation at this time. The Applicant has initiated a good faith effort to repay his overdue creditors or otherwise resolve his debts. 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 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: For the Applicant.
- Subpara. 1.a.: For the Applicant.
- Subpara. 1.b.: For the Applicant.
- Subpara. 1.c.: For the Applicant.

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge