



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-02682
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Department Counsel
For Applicant: *Pro Se*

March 30, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) dated September 10, 2007. On November 7, 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 December 3, 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 January 26, 2009. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on January 29, 2009, and he submitted no reply. The case was assigned to the undersigned for resolution on March 26, 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. 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 each of the allegations set forth in the SOR under this guideline. (Government Exhibit 3). He is indebted to sixteen separate creditors totaling approximately \$32,666.00. Credit Reports of the Applicant dated September 27, 2007, March 14, 2008 and June 20, 2008, reflect that each of the debts remain owing. (Government Exhibits 5, 6 and 8). He has not paid any of his debts.

Although the Applicant admits all of the debts in his answer to the SOR, he states in his Interrogatory Response that "about eight of the debts are not mine" indicating that some of the accounts belong his ex-wife. (Government Exhibit 7). He also provides some documentation that certain debts have been removed from his credit report. These debts, however, were not alleged in the SOR as outstanding.

Applicant attributes most of his financial problems to his ex-wife. He states that she opened accounts that he was not aware of and refused to pay. He has not been able to work with a credit repair company because of the money he has had to spend on attorney fees to get custody of his three children. He now has custody of his three children and plans to resolve his delinquent debts as soon as possible. (Government Exhibit 7).

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.

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.

With respect to his finances, the Applicant remains excessively indebted in the amount of \$32,666.00. Applicant states that his ex-wife caused most of his financial problems but has provided no documentation, either of his efforts to resolve the debts, or from the creditors stating that he is not responsible for the debts. He has therefore, not shown why any of the mitigating conditions should apply. Applicant has not provided any documentation to show that any of his debts, even the small ones have been paid or are being paid off. Nor has he fully set forth the reasons to lay blame for his financial problems on his wife.

Applicant failed to reply to the FORM or submit any mitigating evidence. He has failed to provide a budget or payment plan to explain how his delinquent debts will be paid. It is unclear from the record whether he understands the importance of financial management. A promise to take remedial measures in the future is not evidence of reform and rehabilitation. There is no evidence in the record to demonstrate that he can make his regular monthly payments in addition to making payments on his delinquent

debts. 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. 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.

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.

There is no 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 has 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).

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.
- 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.

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