



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-03155
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

November 25, 2008

Decision

Lokey Anderson, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on August 29, 2008. On July 14, 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.

The Applicant responded to the SOR in writing on August 4, 2008, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on September 19, 2008. A notice of hearing was issued on September 23, 2008, scheduling the hearing for November 6, 2008. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6. The Applicant presented fourteen exhibits, referred to as Applicant's Exhibits A through M. He called one witness and testified on his own behalf. The official transcript (Tr.) was received on November 21, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

The Applicant is 42 years old. He is employed by a defense contractor as a Electrical Technician 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 Statement of Reasons sets forth three separate creditors totaling in excess of approximately \$ 12,000.00. The Applicant admits each of the allegations set forth in the SOR. Credit reports of the Applicant dated September 18, 2007, and August 22, 2008, reflect each of the delinquent debts listed in the SOR. (Government Exhibits 2 and 5).

From November 1984 until April 1993, the Applicant served on active duty in the United States Navy before he was honorably discharged. (Applicant's Exhibit L). During some of this time, he held a security clearance. The Applicant's marital history shows that he has been married three times and divorced twice. In 1987, the Applicant got married and had two children. He and this wife divorced in 1995/96. He remarried in 1997/98, and he and his second wife divorced in 2003.

In September 1998, the Applicant started his own housing interior trim business. The business was not successful, his income dropped dramatically, and he began to have financial problems. (Applicant's Exhibit G). The Applicant testified that he paid his smaller debts, but could not afford to pay the larger ones. (Tr. p. 59). The debt reflected in the SOR, specifically allegations 1(a), 1(b) and 1(c), is his larger debt that was incurred during his previous marriages. In May 2008, in order to resolve his indebtedness, the Applicant filed for bankruptcy protection under Chapter 7. The debts set forth in the SOR were discharged. (Government Exhibit 3 and Applicant's Exhibits A and B). The only asset the Applicant received from the resolution of his marriages was when his house was sold. The Internal Revenue Service credited the money toward the debt he owed and his tax lien was released. (Applicant's Exhibit C and Tr. p. 57).

In 2005, he married his current wife. The Applicant is now current with all of his financial obligations and living within his means. His net salary of \$2,800.00 a month is sufficient to comfortably pay all of his monthly expenses. He is also current with his child support payments which are automatically deducted out of his payroll check. (Applicant's Exhibit J). In addition to his salary, he receives a 10% disability check from the Department of Veteran Affairs. His wife is also employed and contributes between

\$900.00 and \$1100.00 per month to support her two children and miscellaneous expenses.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he intentionally falsified material aspects of her personal background during the clearance screening process.

The Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) dated August 29, 2007. Question 28(b) of the application asked whether he was currently over 90 days delinquent on any debts? The Applicant answered, "NO". (See Government Exhibit 1). He failed to list the delinquent debts set forth in the SOR.

The Applicant testified that he did not list his three delinquent debts in response to question 28(b) because he was not aware of them. He did not think that he had any delinquent debt to speak of and if he had been aware that he had any, he would not have answered, "NO" to the question. (Tr. p. 34).

Applicant's direct supervisor and friend testified that the Applicant is a self-starter, good worker, punctual, responsible and trustworthy. (Tr. p. 67-71).

Letters of recommendation from the Applicant's direct supervisor, professional colleagues, co-workers and friends attest to his strong work ethic, superb customer service skills, honesty, integrity, and overall sense of excellence. He is well respected among and highly recommended for a position of trust. (Applicant's Exhibit I).

Applicant's recent performance appraisal indicates that he "consistently exceeds" requirements in every category. (Applicant's Exhibit M). He also recently received a salary increase for his excellent work performance. (Tr. p. 51).

Applicant completed a debt counseling session on the internet on April 10, 2008. (Applicant's Exhibit H).

Applicant has received several certificates of completion for specialized training in his field of expertise. (Applicant's Exhibit K).

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.

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.

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.

Conditions that could raise a security concern:

None.

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, 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 and/or dishonesty 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 introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case. Two divorces and an unsuccessful business venture caused the Applicant's financial indebtedness. He has, however, since then, made a good faith effort to resolve his past due indebtedness. He has paid off his small debts and filed for Chapter 7 Bankruptcy protection and discharged his larger debts. He understands the importance of paying his bills on time and not living beyond his means. He is current with all of his financial obligations and is living within his means. Under the circumstances, he has made a good faith effort to resolve his indebtedness, and there is evidence of financial rehabilitation. The Applicant has demonstrated that he can properly handle his financial affairs.

Under Guideline F (Financial Considerations), Disqualifying Conditions 19.(a) *inability or unwillingness to satisfy debts*; 19.(c) *a history of not meeting financial obligation*; and 19.(e) *consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ration, and/or other financial analysis* 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. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

There is no evidence to demonstrate that the Applicant deliberately falsified his security clearance application when he failed to list his three delinquent debts. Accordingly, Guideline E is found for the Applicant.

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 good judgement, trustworthiness, reliability, candor, and a willingness to comply with rules and regulations, and/or other characteristics indicating that the person would properly safeguard classified information.

I have considered all of the evidence presented, and the Applicant has mitigated the negative effects of his financial indebtedness and the effects that it can have on his ability to safeguard classified information.

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 Paragraphs 1 and 2 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: For the Applicant.
- Subpara. 1.a.: For the Applicant.
- Subpara. 1.b.: For the Applicant.
- Subpara. 1.c.: For the Applicant.
- Subpara. 1.d.: For the Applicant.

- Paragraph 2: For the Applicant.
- Subpara. 2.a.: For the Applicant.

DECISION

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

Darlene Lokey Anderson
Administrative Judge