



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 08-03479
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Van D. Miller, Attorney At Law

December 8, 2008

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on July 24, 2007. On June 23, 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 August 5, 2008, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on August 22, 2008. A notice of hearing was issued on September 15, 2008, scheduling the hearing for October 3, 2008. On September 23, 2008, a continuance was granted, and the matter was rescheduled for October 28, 2008. The Government offered six exhibits, referred to as Government Exhibits 1 through 6, which were received without objection. Applicant offered eight exhibits, referred to Applicant's Exhibits A through H, and testified on his own behalf. The transcript of the hearing (Tr.) was received on November 6, 2008. Based upon a review

of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Motion to Amend SOR

Department Counsel moved to amend the SOR by adding ¶ 1.d, alleging “You falsified material facts on an Electronic Questionnaires for Investigations Processing (e-QIP) executed by you on July 24, 2007, in response to Section 27. Your Financial Delinquencies, (c) In the last seven years, have you had a lien placed against your property for failure to pay taxes or other debts?” (Tr. pp. 69 -70). Applicant’s counsel had no objection to the motion. (Tr. p. 70). The motion to amend the SOR was granted.

FINDINGS OF FACT

The Applicant is 45 years old. He is employed by a defense contractor as an Aircraft Mechanic 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 joined the United States Air Force in 1983, and served for ten years. He completed a security clearance application in the military and held a DoD security clearance much of that time. He attained the rank of Sergeant, E-4. After receiving an honorable discharge, he began working for a defense contractor. (Applicant’s Exhibit E). For a period he and his wife spent beyond their means. He has learned from his mistakes and the problem has been corrected.

The Applicant filed for Chapter 13 Bankruptcy on July 15, 2003. He listed liabilities totaling \$335,250.00. His bankruptcy was dismissed on March 13, 2006. He and his wife obtained a loan and were able to pay off all of their outstanding delinquent debt either in full, or through a settlement agreement. (Applicant’s Exhibit A). A debt in the amount of \$633.00 was paid in December 2005. (Tr. pp. 45-46). A debt in the amount of \$18,000.00 for a boat that was voluntarily repossessed was also paid off in full. (Applicant’s Exhibit B and Tr. p. 62). Credit reports of the Applicant dated September 6, 2007, June 12, 2008, August 20, 2008, and October 27, 2008, reflect the Applicant’s bankruptcy as well as the delinquent debts listed in the SOR. (See Government Exhibits 3, 4, 5 and 6).

The Applicant is currently meeting all of his monthly expenses. His total income is approximately \$9,000.00 a month. He states that his total monthly living expenses total \$2,033.00. His debts total \$3,444.00. This totals approximately \$5,500.00. He has about \$3,700.00 left over at the end of the month. (See Applicant's Exhibit C and Tr. p. 37).

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

The Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP) dated July 24, 2007. Question 27(a) of the application asked the Applicant if in the last 7 years had he filed a petition under any chapter of the bankruptcy code (to include Chapter 13) The Applicant answered, "NO". (See Government Exhibit 1). This was a false answer. He failed to list his Chapter 13 bankruptcy filed on July 15, 2003. He explained that because he and his wife eventually paid off all of their creditors in full, either by full payment or a settlement from obtaining a loan, he considered it to be dismissed. (Tr. p. 39). He also stated that if he had answered the question "YES" a pop up would appear that required him to know the financial figures concerning the Bankruptcy and he did not have that information. (Tr. p. 81). He would have had to call his wife to get the information. He planned to explain it sometime later to an investigator.

Question 27(b) of the same application asked the Applicant if in the last seven years have your wages been garnished or has any property been repossessed for any reason. The Applicant answered, "NO". (See Government Exhibit 1). This was a false answer. He failed to disclose the repossession by Bank of America of the boat he returned because he could no longer make the payments, as set forth in allegation 1(c) of the SOR. The Applicant explained that because he voluntarily surrendered the boat, he believed that the property was not technically repossessed. (Tr. pp. 41-43).

Question 27(c) of the same application asked the Applicant if in the last seven years had he had a tax lien against him. The Applicant answered, "NO". (See Government Exhibit 1). This was a false answer. He failed to disclose the tax lien that had been filed against him in January 2003 that was paid in December 2005. (Tr. p. 67). The Applicant states that he vaguely remembers a tax lien. (Tr. pp. 67-68).

Question 28 of the same application asked the Applicant if in the last 7 years have you been 180 days delinquent on any debts. The Applicant answered, "NO". This was a false answer. He failed to disclose that he had been at least 180 days delinquent on several of his debts, including allegation 1(b) of the SOR. The Applicant explained that the Applicant's most recent credit report dated April 30, 2008, that lists the debt set forth in 1(b) is erroneous. He contends that the debt was paid in December 2005 by way of a settlement. (Tr. p. 45).

To go to the extent of filing Bankruptcy in the first place, one had to have so much debt that they are unable to control it. Applicant was obviously in that situation. It is difficult to conceive that he did not have debt that was at least 180 days delinquent. His credit report reveals a number of collection accounts, although the Applicant has no recollection of such. (Tr. p. 73 and Government Exhibits 3, 4, 5 and 6).

Furthermore, when the Applicant completed the security clearance application, he was seated next to his supervisor. If he had any questions concerning how to answer the questions, he could have easily asked him about them. (Tr. p. 66). He did not. I find that the Applicant was not truthful in answering the questions on the application concerning his past delinquent financial history. He falsified material facts on his security clearance application when he failed to list his Chapter 13 Bankruptcy in response to question 27(a), his voluntary repossession in response to question 27(b), his tax lien in response to question 27(c) and his debt at least 180 days delinquent in response to question 28. Clearly the Applicant knew of his financial delinquencies of the past and intentionally sought to conceal the information from the Government when he filled out the security clearance application.

A letter from the Applicant's Production Supervisor indicates that the Applicant is highly motivated, honest, reliable, and productive employee. (Applicant's Exhibit D).

A letter of recommendation from the Applicant's Operation Supervisor reflects that the Applicant is an important asset to the department. He is considered responsible and reliable. Awards and certificates further demonstrate the Applicant's training and commitment to his field of expertise. (Applicant's Exhibit G).

Applicant's performance reviews from 1997 through the present reveal ratings from "very good" to "outstanding" in every category. (Applicant's Exhibit F).

Applicant has received numerous military commendations as well as certificates of training and appreciation for his work in the defense industry. (Applicant's Exhibits E and H).

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;

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.

Condition that could raise a security concern:

16.(a) Deliberate omission, concealment or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Condition 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 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 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) and dishonest (Guideline E). 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. Admittedly, the Applicant has made a good faith effort to resolve his past due indebtedness. He initially filed for Chapter 13 bankruptcy protection and after following the trustee's plan for a while, was able to obtain a loan and pay off his creditors in full or through a settlement agreement. He understands the importance of paying his bills on time and 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 ratio, 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).

On the other hand, the evidence concerning the Applicant's dishonesty on his security clearance application is overwhelming, and none of his excuses are reasonable. The Applicant is an intelligent man who was familiar with the security clearance application from his experience in the military. He clearly understood the questions on the application. He obviously did not want to disclose any information on his security clearance application that would adversely effect his ability to obtain a security clearance. He intentionally falsified his security clearance application of 2007, when he deliberately failed to disclose material information concerning his past financial history. This intentional deception goes directly to the Applicant's credibility. I cannot find that he is sufficiently trustworthy to have access to classified information. The Government relies heavily upon the integrity and honesty of clearance holders. It is a negative factor for security clearance purposes when an Applicant has deliberately provided false information about material aspects of his personal background.

Under Personal Conduct, Guideline E, Disqualifying Condition *16.(a) Deliberate omission, concealment or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities* applies. None of the mitigation conditions are applicable. Accordingly, Guideline E is found against 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 poor judgement, untrustworthiness, unreliability, a lack of candor, 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, however, it does not come close to mitigating the negative effects of his dishonesty and the effects that it can have on his ability to safeguard classified information. 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 2 of the SOR. Paragraph 1 is found for the Applicant.

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.

Paragraph 2: Against the Applicant.
Subpara. 2.a.: Against the Applicant.
Subpara. 2.b.: Against the Applicant.
Subpara. 2.c.: 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