



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



In the matter of:)
)
-----) ISCR Case No. 08-04026
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Department Counsel
For Applicant: James W. Green, Attorney At Law
Edmunds, Green & Robinson, LLP

January 9, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Questionnaire for National Security Positions dated July 3, 2007. On June 9, 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 July 8, 2008, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on September 4, 2008. A notice of hearing was issued on September 12, 2008, scheduling the hearing for October 8, 2008. A request for continuance was granted, rescheduling the matter for November 18, 2008. At the hearing the Government presented eight exhibits, referred to as Government Exhibits 1 through 8. The Applicant called one witness, presented six exhibits, referred to as Applicant's Exhibits A through F, and testified on his own behalf. The record was left open until close of business on November 28, 2008, to allow the Applicant to submit additional supporting documentation. The Applicant submitted one Post-Hearing Exhibit,

consisting of six enclosures, referred to as Applicant's Post-Hearing Exhibit that was admitted into evidence without objection. The official transcript (Tr.) was received on December 4, 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 43 years old and married for the third time. He is employed by a defense contractor as a Machine Test 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). 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 subparagraph. Credit reports of the Applicant dated July 31, 2007, May 23, 2008, and August 22, 2008, indicate that he remains indebted in the amount of approximately \$12,000.00. (See Government Exhibits 3, 5 and 6). Even though some of the delinquent debts owed are not large ones, the Applicant has not paid them.

Applicant was born in France. He came to the United States in 1987, at the age of twenty-three, He has been married three times. During his second marriage, from approximately 1994 to 1998, his wife spent money recklessly and did not pay the bills. Although he worked three jobs and six to seven days a week to please her, he was not involved in the household finances. (Tr. p. 52). His wife handled the finances and he was not aware that the bills were not being paid. She suggested that Bankruptcy would be a good option to resolve their indebtedness. The Applicant agreed and on August 25, 1998, he filed for bankruptcy under Chapter 7. On December 2, 1998, his unsecured debts were discharged. (Government Exhibit 1).

At some point, the Applicant's wife took their son and moved out of state. The Applicant, wanting to be close to his son, left his job and followed them. Any money he had he gave to his ex-wife so that she would allow him to see his son. A vehicle that his ex-wife was supposed to make the payments on was repossessed for lack of payment. The Applicant was unemployed for about six months. He supported himself by working odd jobs and using credit cards. His wife also suffered some health problems related to a diagnosis of endometriosis that required surgery. Their insurance paid some of the

debt, but not all of it. The Applicant believes that his creditors lost track of how to locate him. (Tr. P. 52).

The Applicant is indebted to the following creditors. A debt owed to Sprint PCS in the amount of \$130.00 remains outstanding. A debt owed to PRGRSVMGNT in the amount of \$34.00 remains outstanding. A debt owed to Washington Mutual in the amount of \$487.00 remains outstanding. A debt owed to Sprint Telecom in the amount of \$108.00 remains outstanding. A debt owed to Cal Bus Bureau in the amount of \$320.00 remains outstanding. A debt owed to Cal Bus Bureau in the amount of \$50.00 remains outstanding. A debt owed to Bay Area CR in the amount of \$385.00 remains outstanding. A debt owed to Palisades/Verizon in the amount of \$447.00 remains outstanding. A debt owed to AAC/Household in the amount of \$968.00 remains outstanding. A debt owed to Pacific Gas & Electric in the amount of \$19.00 remains outstanding. A debt owed to 1STMWTDDELTA in the amount of \$186.00 remains outstanding. A debt owed to CACVLLC/Household Automotive in the amount of \$12,385.00 was reduced to \$4,000.00 and remains outstanding. A debt owed to Cal Coast Medical Payment Data in the amount of \$126.00 remains outstanding. A debt owed to Central Financial in the amount of \$55.00 remains outstanding. A debt owed to Gess and Associates in the amount of \$66.00 remains outstanding. A debt owed to AFNI/Verizon in the amount of \$389.00 remains outstanding. A debt owed to Paragonway/Advance American Cash in the amount of \$300.00 remains outstanding. A debt owed to PRIG Mgt Sys/Medical Payment Data in the amount of \$100.00 remains outstanding. A debt owed to TA Ross Coll in the amount of \$790.00 remains outstanding. Two debts owed to Medical Payment Data in the amount of \$359.00 and \$320.00 respectively, remain outstanding. A debt owed to Ca Bus Bureau in the amount of \$50.00 remains outstanding. A debt owed to Reli Rec Svc in the amount of \$103.00 remains outstanding. A debt owed to CB Stockon in the amount of \$460.00 remains outstanding. A debt owed to Providian Bank in the amount of \$2,259.00 remains outstanding. A debt owed to CMRE Finance in the amount of \$109.00 remains outstanding.

In 2005, the Applicant started working for his current employer. He married his current wife last year and they have a three year old son. Applicant testified that he was not aware of his outstanding debts until his interview with an investigator from DoD in September 2007. He further stated that he did not know if he had to pay his delinquent debts because they were at least five years old. (Tr. pp. 73-74). He did not hire an attorney to assist him with his case until six weeks before the hearing.

In October 2008, a debt owed to LBK Management in the amount of \$2,970.00 started garnishing the Applicant's wages in the amount of \$325.00 per week. (Tr. p. 46). He has made seven payments as of today's date.

Not realizing the importance of paying his delinquent debts, just two weeks before the hearing, the Applicant contacted a consumer credit counselor to assist in consolidating his outstanding debt. A payment plan is now in place that requires that he pay \$170.00 a month to the consumer credit counselor that will go toward payment of

his outstanding debts, with the exception of the debt owed to LBK that is being paid through garnishment. (Tr. p. 48 and Applicant's Post-Hearing Exhibit). Applicant claims that he will stick to the payment plan as long as he is receiving financial assistance from his mother-in-law. (Tr. p. 49). Since his separation with this second wife, Applicant has consistently paid child support for their son, However, he stopped making those payments about three months ago in order to use that money to pay other debts.

Applicant currently works as much overtime he can get. His present wife is a full time college student and not employed. They receive financial support from his mother-in-law in the amount of about \$800.00 a month in order to meet their regular monthly living expenses. (Tr. p. 25). In about a year, his wife will graduate from college and start working, anticipating that she will earn between \$12.00 and \$15.00 per hour.

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

The Applicant completed an Electronic Questionnaire for Investigations Processing dated July 3, 2007. Question 28(a) of the application asked the Applicant if he has ever been over 180 days delinquent on any debts. The Applicant answered "YES", and listed only one debt owed to Collect American for a repossessed vehicle. This was not accurate. The Applicant failed to list the other twenty six delinquent debts set forth under paragraph 1 of the SOR. Question 28(b) asked him if he was currently 90 days delinquent on any debts. The Applicant answered "NO". (See Government Exhibit 2). This was a false answer. Again, the Applicant failed to list any of the debts set forth in the SOR. The Applicant explained that he was confused by the questions, English is not his first language, and he did not know about the debts until he met with the investigator during his background investigation. (See Applicant's Answer to SOR and Tr. pp 55 and 61). I find that the Applicant knew about his delinquent debts at the time he completed the application and intentionally sought to conceal them from the Government.

Applicant's mother-in-law testified that she has known the Applicant for four years and sees him twice a month. She considers him to be responsible, reliable and trustworthy. She contributed \$800.00 a month toward their monthly household income. She realizes that the Applicant has significant debt that was caused by his ex-wife and plans to continue to help them financially, but she has no plans of paying the Applicant's delinquent debt. (Tr. pp. 24 - 35).

Letters of recommendation from Applicant's supervisor and coworkers attest to his dependability and trustworthiness. He is considered to be a man of good character and integrity, and is highly recommended for a position of trust. (Applicant's Exhibits A and B).

Performance evaluations of the Applicant for the past three years reflect that he has either met, exceeded, or has been outstanding in every category required in his job description. (Applicant's Exhibits D and E).

Applicant received a certificate for receiving financial counseling on October 16, 2008. (Applicant's Exhibit C).

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.

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) The deliberate omission, concealment, or falsification of relevant and material 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, 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 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 he has been untruthful on his Questionnaire for National Security Positions (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.

Admittedly, the Applicant’s second wife contributed to his financial delinquencies. However, until recently he has not demonstrated good financial judgment either. Despite the fact that they divorced in 1997, filed Chapter 7 bankruptcy in 1998, they still had excessive indebtedness. Since then and until recently, the Applicant ignored his delinquent debts. He started working for his current employer in 2005. He states that he learned about the debts in September 2007. Two weeks before the hearing, in November 2008, the Applicant contacted a consumer credit counselor to consolidate his debts and set up a payment plan to resolve them. At the present time, all of his debts remain owing. One of his debts is being paid through garnishment. The others, he plans to pay through the payment plan and as of now he has made just one payment. 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.

With respect to his finances, the Applicant has in excess of \$12,000.00 in delinquent debt. He has just started the financial rehabilitation process and has a long way to go before they are resolved. 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.

Upon review of his financial statement, it appears that he has little disposable income at the end of the month to pay his past due bills. Depending on his overtime and with the help of his mother-in-law, he is barely able to make ends meet. In fact, he stopped paying child support to his second wife. There is little 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, they are not isolated, and until two weeks ago, the Applicant had 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).

With respect to Guideline E, the Applicant deliberately concealed material information from the Government on his security clearance application in response to his financial matters. With the particular evidence that I have been provided, there is no reasonable excuse for his failure to answer the questions truthfully. Although English is his second language, if he cannot understand the questions on the security clearance application, and answer them correctly, he cannot be found eligible to protect the national secrets of the United States. Consequently, the evidence shows that the Applicant cannot be trusted with the national secrets. Disqualifying Condition *16(a) the deliberate omission, concealment, or falsification of relevant and material 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 mitigating conditions are applicable. I find that the Applicant deliberately sought to conceal material information from the Government and that he cannot be trusted with the national secrets.

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 Paragraphs 1 and 2 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.
- Subpara. 1.q.: Against the Applicant.
- Subpara. 1.r.: Against the Applicant.
- Subpara. 1.s.: Against the Applicant.
- Subpara. 1.t.: Against the Applicant.
- Subpara. 1.u.: Against the Applicant.
- Subpara. 1.v.: Against the Applicant.
- Subpara. 1.w.: Against the Applicant.
- Subpara. 1.x.: Against the Applicant.
- Subpara. 1.y.: Against the Applicant.
- Subpara. 1.z.: Against the Applicant.
- Subpara. 1.aa.: Against the Applicant.
- Subpara. 1.bb.: Against the Applicant.

Paragraph 2: Against the Applicant.

- Subpara. 2.a.: Against the Applicant.
- Subpara. 2.b.: 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

