



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-04497
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: *Pro Se*

July 30, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on February 10, 2009. (Government Exhibit 1). On March 12, 2009, 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 on April 17, 2009 and April 25, 2009, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on May 12, 2009. A notice of hearing was issued on June 2, 2009, scheduling the hearing for June 25, 2009. At the hearing the Government presented five exhibits, referred to as Government Exhibits 1 through 5. The Applicant presented one exhibit, referred to as Applicant's Exhibit A, which was admitted into evidence without objection. He also testified on his own behalf. The record remained open until the close of business on July 9, 2009, to allow the Applicant to submit additional supporting documentation. Applicant submitted two Post-Hearing Exhibits, which were admitted into evidence without objection, and are referred to as Applicant's Post-

Hearing Exhibits A and B. The official transcript (Tr.) was received on July 2, 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 Applicant is 46 years old, married, and six months away from a Bachelor's of Science Degree in Business Management. He is employed by a defense contractor as a Project Manager 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 admits that he was indebted to two separate creditors totaling approximately \$23,386.00. These two debts are set forth in the SOR under allegations 1(a) and 1(b). Credit reports of the Applicant dated October 19, 2006, November 25, 2008, and June 19, 2009, reflect both of these delinquent debts as owing. (Government Exhibits 3, 4 and 5).

From 1994 to 2002, during a previous relationship, the Applicant lived paycheck to paycheck, and beyond his means. (Tr. p. 43, 47). He was in over his head, struggling to pay the household bills and earning half of what he makes now. He finally got out of the relationship, did an inventory of his financial situation and started trying to repair his credit. In 2003, he made an intense effort to clean up his credit. He sought out better employment opportunities at work, and used the extra money to pay past due accounts and collection accounts that are not alleged in the SOR. (Tr. pp. 45-46).

Since receiving the SOR, the Applicant has worked hard to resolve his indebtedness. A delinquent debt owed to Beneficial in the amount of \$22,000.00, which was a second mortgage on his home he bought in 1999, that was foreclosed upon in 2001, has been settled. The Applicant settled the debt with the creditor for \$1,300.00. (See Tr. pp. 27-30 and Applicant's Exhibit A). A delinquent credit card debt in the amount of \$400.00 remains outstanding. The Applicant has made numerous efforts to contact the creditor in order to pay off the debt, but has been unable to locate him.

The Applicant now handles his finances very differently than before. He and his current wife have been working hard to improve their credit. They live frugally and live within their means. Applicant's credit report is now hovering around 670 which is an improvement. He earns about \$7,000.00 per month. After paying his monthly

household expenses, including making both his and his wife's car payments, he is still able to save money or go out to dinner once in a while. The Applicant plans to continue to live within his means, pay his bills on a timely basis and be financially responsible.

A letter of recommendation from the Applicant's Project Leader indicates that the Applicant is very responsible on the job. He is considered reliable, timely and on budget. His leadership, accountability and organizational skills are a major reason he does his job so well. (Applicant's Post-Hearing Exhibit A).

Applicant's performance appraisals for January 2004 through December 2004, January 2005 through December 2005 and January 2008 through December 2008, reflect ratings of "met expectations" and "exceeded expectations" in every category but one. He has made good progress in learning his job. (Applicant's Post-Hearing 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.

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.(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, 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 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.

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. The Applicant has made a good faith effort to resolve his past due indebtedness. The evidence shows that since receiving the SOR, the Applicant has resolved all of his delinquent debts, except one. He would have paid it off, if he were able to locate the creditor. He is over the relationship that caused him financial ruin. He and his current wife are financially careful and responsible. The Applicant has been cleaning up his credit and resolving his indebtedness. Applicant understands that to hold a security clearance is a privilege and that he must be fiscally responsible at all times.

Under Guideline F (Financial Considerations), Disqualifying Conditions 19.(a) *inability or unwillingness to satisfy debts* and, 19.(c) *a history of not meeting financial obligation* apply. However, Mitigating Conditions 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).

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 above, when viewed under all of the guidelines 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 may properly safeguard classified information.

I have considered all of the evidence presented, and it mitigates 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 Paragraph 1 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.

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