



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



In the matter of:)
)
-----) ISCR Case No. 08-06438
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

May 27, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) dated November 29, 2008. On December 8, 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 January 2, 2009, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on March 2, 2009. A notice of hearing was issued on March 11, 2009, scheduling the hearing for April 2, 2009. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6. The Applicant presented eight exhibits, referred to as Applicant's Exhibits A through H. He also testified on his own behalf. The record remained open until close of business on April 13, 2009, to allow the Applicant to submit additional documentation. The Applicant submitted four Post-Hearing Exhibits, referred to as Post-Hearing Exhibits 1 through 4. The official transcript (Tr.) was received on April 14, 2009. Based upon a review of the case file,

pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

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 48 years old, and has a Master's Degree in Business Administration. He is employed by a defense contractor as a Senior Program Quality Engineer 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. Credit Reports of the Applicant dated December 8, 2007, September 23, 2008 and February 20, 2009, collectively reflect each of the delinquent debts set forth in the SOR. These reports indicate that the Applicant is currently indebted to at least five of the six creditors listed in the SOR for an amount totaling approximately \$78,000.00. (Government Exhibits 2, 4 and 5).

From March 1995 to March 1998, Applicant attended a university and obtained his Bachelor's Degree. From September 1999 to December 2001, he attended graduate school at another university and received his Master's Degree.

In May 1989, the Applicant was employed for a state agency, when he sustained an injury that resulted in him ultimately retiring on disability in 1991. While on retirement and waiting the process of Workers Compensation, he chose to go back to school. He took out student loans in order to pay for his education. He is currently indebted to the Department of Education for two delinquent accounts, one in the amount of approximately \$26,780.00, and the other in the amount of \$37,865.00, both referred for collection in September 2007. Applicant testified that when he incurred the student loans, he believed that they would be paid through workers compensation with the Department of Rehabilitation.

In 1999, Applicant hired a law firm to represent him in his workers compensation claim. Applicant has undergone a number of surgeries as a result of his work related injury. The most recent surgery occurred in October 2008. A letter from his attorney indicates that one of the issues that will be addressed in his workers compensation case is reimbursement of his prior schooling with regard to his past vocational rehabilitation plan. (Applicant's Post-Hearing Exhibit 4). There is no evidence in the record that the

Applicant's vocational rehabilitation plan included paying for his undergraduate and/or masters degree. As of this date, there is no evidence that the Applicant's workers compensation case will be successful.

The Applicant became indebted to each of the creditors set forth in the SOR. Recently, he has paid off two of the smaller debts. A debt to a creditor in the amount of \$984.00 was paid on February 13, 2009. (Applicant's Exhibit B). A debt owed to a creditor in the amount of \$169.00 was paid on April 6, 2009. (Applicant's Post Hearing Exhibit 5). Two other debts owed to a creditor in the amounts of \$3,4374.00, and \$8,733.00 are currently being consolidated for payment. At the hearing, the Applicant testified that he was going to pay \$9,600.00 toward those debts and believes that he will owe a remainder of approximately \$2,500.00. (Tr. p. 42 and Applicant's Exhibits C and D).

In July 2006, the Applicant began working for his current employer. Six months ago, the Applicant began a loan rehabilitation program to address his student loans. Presently, he has made six payments of approximately \$165.00 per month toward one of his student loans. In regard to his other student loan, he has made two payments of \$960.00. He will need to make eight more payments of \$960.00 before this loan will be eligible for consolidation. He hopes to have both loans consolidated so that he can set up a permanent payment plan and start resolving the debt.

Applicant's performance appraisal for 2008 was favorable as it reflects that he has been a diligent and loyal employee who has provided exceptional support to the ITP organization. Among other attributes, he is considered trustworthy and reliable. (Applicant's Exhibit H).

Letters of recommendation from the Applicant's manager, a neighbor, and a friend attest to his honesty, high moral character, loyalty, trustworthiness, respectfulness, conscientiousness and overall ability to always follow rules and regulations required on the job. (Applicant's Post-Hearing Exhibits 3 and 4).

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:

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.

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
- 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, 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.

Applicant is indebted to at least two separate creditors, for four accounts in the amount in excess of approximately \$65,000.00. Admittedly, circumstances beyond his control are partially responsible for his financial demise. His injury in 1988, followed by his disability in 1991, adversely effected his financial situation. However, his decision to take out student loans to pay for his advanced education raises another issue. The evidence in the record does not indicate that the Applicant's student loans were to be paid by the Department of Rehabilitation through his workers compensation claim. Almost twenty years has passed since the Applicant started his workers compensation claim, and he has still not resolved his delinquent student loans. This is a good indication that he will not be successful with this case.

Recently, the Applicant has decided to take responsibility for his delinquent debts and is commended for this decision. However, he has done too little, too late. Given the extent of his indebtedness, it is too early to determine if he will be successful with following through with his intended payment plan and ultimately resolving his debts. A promise to take remedial measures in the future is not evidence of reform and rehabilitation. Furthermore, there is no evidence in the record to demonstrate that he can even afford to make regular monthly payments, once they are arrived at, in addition to paying his regular monthly expenses. 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.

Under Guideline F (Financial Considerations), Disqualifying Conditions 19(a) *inability or unwillingness to satisfy debts*, 19(c) *a history of not meeting financial obligations* apply. Arguably, Mitigating Condition 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* also applies. However, this mitigating condition is outweighed by the extent of the debt that remains outstanding, and Applicant's lack of action to resolve it. Only recently has he done anything to resolve the debts. Despite his efforts, his financial problems remain current and they are not isolated. He has not initiated a prompt, good faith effort to repay his overdue creditors or otherwise resolve his debts. There is insufficient evidence of financial rehabilitation at this time. 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.

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