



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-07399
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

June 8, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) dated August 11, 2005. On February 4, 2009, 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.

Applicant answered the SOR in writing on March 2, 2009, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on April 2, 2009. A notice of hearing was issued on April 8, 2009, scheduling the hearing for May 6, 2009. The Government offered nine exhibits, referred to as Government Exhibits 1 through 9, which were received without objection. Applicant offered ten exhibits, referred to Applicant's Exhibits A through J, that were admitted into evidence. He also testified on his own behalf. The record remained open until close of business on June 6, 2009 to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted no additional documentation. The transcript of the hearing (Tr.) was received on May 19, 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 following Findings of Fact are based on the Applicant's Answer to the SOR, his testimony and the exhibits. The Applicant is 58 years old and has a high school diploma. 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). 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 to each of the allegations set forth in the SOR, except 1(p), under this guideline. He has at least twenty-five separate delinquent accounts totaling approximately \$ 43,000.00. Credit Reports of the Applicant dated January 25, 2007 and September 29, 2007, collectively reflect each of the outstanding debts listed in the SOR. (See Government Exhibits 2 and 3).

Prior to 2001, the Applicant was employed with the same defense contractor for sixteen years. (See Government Exhibit 1). At some point, he was laid off for lack of work. In May 2005, he received a letter from his previous employer with an offer to return to work, but he needed a security clearance to do so. (Applicant's Exhibit A). In August 2005, the Applicant completed the requisite security clearance application and his background investigation began.

Applicant explained that before his finances became an issue, a number of other questions arose during the investigation that did not actually concern him, but were found to be people with his same name. These matters were resolved favorably for the Applicant.

The Applicant's credit reports reflect that before November 2007, his bills were paid on time. In November 2007, he was diagnosed with lung cancer. (Applicant's Exhibit F). He then went out on disability and underwent surgery. Following his surgery, he was laid off from work. He had no medical insurance at the time and the bills started falling behind. He was not employed again until August 2008, when he worked for six weeks before being laid off again. None of the Applicant's job lay-offs were his fault, but were due to industry downsizing.

In April or May 2008, he was diagnosed with a growth on his tongue and in his throat that was initially thought to be cancer. The Applicant still had no medical

insurance. This caused more financial difficulties. The Applicant used his unemployment check to pay for the basic necessities, such as food and rent. He incurred medical bills, credit card debt and federal income tax debt that he simply could not afford to pay. (Applicant's Exhibits F, H, I and J).

In 2007, he hired a law firm to assist him with his indebtedness, but they did nothing to help him. He fired them, and in 2008, hired another lawyer who recently filed a petition for Chapter 7 Bankruptcy on behalf of the Applicant. It took some time for the Applicant to complete the fee arrangement that he was paying on a monthly basis that would get the Bankruptcy started. That is the reason why the bankruptcy petition was not filed on an earlier date. (Applicant's Exhibit C). Each of the debts listed in the SOR have been included in Applicant's bankruptcy petition, except the two federal tax debts in the amounts of \$650.78 and \$58.00 respectively. (Applicant's Exhibit D). In February 2009, Applicant was diagnosed with COPD and was hospitalized for four days.

Presently, the Applicant's brother and son are living with the Applicant and assisting him financially with paying for food and rent, providing an additional \$500.00 per month. (Applicant's Exhibit B). He remains on unemployment but is still eligible for re-hire by his previous employer if he obtains a security clearance.

Letters of recommendation from the Applicant's coworkers, friends and landlord attest to his reliability, trustworthiness and good judgment. He is described as honest, conscientious, detail oriented and punctual. He is highly trusted, and a person who gives an honest days work for an honest days pay. He is an individual who carries out his duties and responsibilities with vigor and resolve and who is an asset to any organization. (Applicant's Exhibit E).

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:

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, 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.

Under the particular circumstances of this case, I find that the Applicant's excessive indebtedness and financial hardship was caused by his recent illnesses and long periods of unemployment. Even though he currently remains on unemployment, he sought out financial counseling and hired an attorney who filed Chapter 7 Bankruptcy to discharge the debt. Most of the debt is for medical bills and other expenses that he could not afford to pay during this time. Given his excessive indebtedness and his current situation, he has done his best and has made a good faith effort to resolve them. Once his debts are discharged, he will have a fresh start. Once his employment begins, he should no longer have any problems paying his bills on time, as he fully understands the importance of living within ones means. In the event that he has any future financial problems, his security clearance would immediately be in jeopardy. 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.

Under Guideline F, Disqualifying Conditions *19(a) inability or unwillingness to satisfy debts* and, *19(c) a history of not meeting financial obligations* 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.

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, a willingness to comply with rules and regulations, or other characteristics indicating that the person may properly safeguard classified information.

There is evidence of financial rehabilitation at this time. The Applicant has initiated a good faith effort to repay his overdue creditors or otherwise resolve his debts. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

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 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: 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.
- Subpara. 1.e.: For the Applicant.
- Subpara. 1.f.: For the Applicant.
- Subpara. 1.g.: For the Applicant.
- Subpara. 1.h.: For the Applicant.
- Subpara. 1.i.: For the Applicant.
- Subpara. 1.j.: For the Applicant.
- Subpara. 1.k.: For the Applicant.
- Subpara. 1.l.: For the Applicant.
- Subpara. 1.m.: For the Applicant.
- Subpara. 1.n.: For the Applicant.
- Subpara. 1.o.: For the Applicant.
- Subpara. 1.p.: For the Applicant.
- Subpara. 1.q.: For the Applicant.
- Subpara. 1.r.: For the Applicant.

Subpara. 1.s.: For the Applicant.
Subpara. 1.t.: For the Applicant.
Subpara. 1.u.: For the Applicant.
Subpara. 1.v.: For the Applicant.
Subpara. 1.w.: For the Applicant.
Subpara. 1.x.: For the Applicant.
Subpara. 1.y.: For the Applicant.
Subpara. 1.z.: For the Applicant.

DECISION

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

Darlene Lokey Anderson
Administrative Judge