



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-07463
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

February 2, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on March 11, 2008. (Government Exhibit 1). On August 28, 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 October 3, 2008, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on October 29, 2008. A notice of hearing was issued on October 31, 2008, scheduling the hearing for December 9, 2008. The Government offered five exhibits, referred to as Government Exhibits 1 through 5, which were received without objection. Applicant offered one exhibit, referred to Applicant's Exhibit A, and testified on his own behalf. The record was left open until close of business on January 9, 2009, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted four documents referred to as Applicant's Post-Hearing Exhibits 1 through 4 that were admitted into evidence without objection. The transcript of the

hearing (Tr.) was received on December 17, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 54 years old. He is employed by a defense contractor as a Tech-3 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 is indebted to various creditors in the amount of approximately \$29,000.00. (Applicant's Exhibits 2 and 4). He admits all of the allegations set forth in the SOR, except allegations 1(d), 1(f), 1(g), 1(h) and 1(i). He denies these debts because he believes that his accidental insurance should have paid them. He submitted no documentary evidence to support this assertion.

Prior to 2004, the Applicant's job required that he travel frequently. His wife handled all of the finances. In November 2004, the Applicant filed for divorce and moved out of the house. His wife was suffering from severe emotional problems from prescription drugs she was taking. The Applicant was not aware that she was not filing their income tax returns. The divorce is not yet final due to their tax issues. (Tr. p. 43).

From 2004 to sometime in 2007, the Applicant, who is a General Contractor, had his own construction and remodeling business. He obtained a business loan and used credit cards to help finance the business. His business was not successful, and in 2005, he started having difficulty paying his bills.

To further complicate matters, in November 2006, the Applicant was riding his motorcycle in the desert and hit a rock that threw him from the bike. He landed on his head and cracked his vertebra. He was out of work for four months. Although he had medical insurance, it only paid some of his bills, the others became delinquent and were eventually sent to collection. He returned to work but in May 2007, he tripped on a fireplace hearth while carrying some equipment and broke his wrist.

The following debts became delinquent; a state tax lien in the amount of \$8,118.00. (Government Exhibit 3). This debt is currently being paid through voluntary garnishment in the amount of \$235.00 per pay period. Applicant expects the debt to be paid off by the end of 2009. A business loan in the amount of \$12,409.00 was being

paid until the Applicant's accident. Since then, the Applicant has contacted the creditor but has not set up a payment plan. A credit card debt owed to CAP ONE in the amount of \$4,409.00 remains outstanding. A medical bill owed to CMRE FINANCIAL in the amount of \$304.00 remains outstanding. A debt owed to LOWES in the amount of \$779.00 remains outstanding. A debt owed to MERVYNS in the amount of \$20.00 has been paid. A medical bill owed to GRANT & WEBER in the amount of \$365.00 remains outstanding. A medical bill owed to JJMAC/LATITU in the amount of \$1,647.00 remains outstanding. A debt owed to Sears and transferred to LVNV FUNDING in the amount of \$1,232.00 remains outstanding. A debt owed to VERIZON in the amount of \$156.00 remains outstanding.

In December 2007, the Applicant started working for his current employer. From the DoD investigation concerning his security clearance, he learned that his income tax returns for the past five years had not been filed. In July 2008, he hired a tax attorney and he has filed two of the five returns. His attorney is currently working on his 2002, 2004 and 2005 income tax returns.

Letters of recommendation from the Applicant's Supervisor, Project Lead, team member and a long time friend attest to the Applicant's dependability, reliability, meticulous nature and trustworthiness. (Applicant's Exhibit A).

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;

Condition 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 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 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 not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case. Admittedly, a series of unfortunate circumstances caused the Applicant's financial demise. His divorce, his failed business, and two accidents all contributed to his financial problems. However, since December 2007, he has been working full time and at times overtime for his current employer, and has only paid off one of his debts, a debt for \$20.00. He is making payments on the tax lien, but the other debts remain outstanding and are substantial. In fact, the Applicant owes at least \$20,000.00 in debt, possibly more. Under the circumstances, he has not made a good faith effort to resolve his indebtedness, and there is insufficient evidence of financial rehabilitation. The Applicant has not 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. 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, even so, he has not shown sufficient good judgment since the unfortunate circumstances to meet security clearance eligibility requirements. Accordingly, I find against 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 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 financial indebtedness and its impact 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 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:	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.:	For 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.

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