



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-03681
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. DeLaney, Department Counsel
For Applicant: *Pro Se*

October 28, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Questionnaire for Sensitive Positions (SF-86) dated June 23, 2008. (Government Exhibit 5). On June 18, 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.

The Applicant responded to the SOR in writing on July 15, 2009, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on August 5, 2009. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on August 12, 2009, and he submitted no reply. The case was assigned to the

undersigned for resolution on October 15, 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 37 years old, and has an Associate's Degree. He is employed by a defense contractor 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 subparagraphs a through u, except e., f., i., and p., of the SOR. With respect to the debts that he denied, he failed to provide any documented proof to support any disputes, or actions to resolve them. Credit Reports of the Applicant dated July 12, 2008, February 10, 2009, and May 22, 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 seventeen separate creditors totaling approximately \$ 43,000. (Government Exhibits 6, 7 and 8).

The Applicant attributes his financial indebtedness to several circumstances beyond his control, but provides no documentary evidence to support these facts. Namely, that in May 2004, he was medically discharged from the Army and became unemployed. Applicant failed to provide any information identifying the reason for his medical discharge. In June 2004, he obtained civilian employment, but in April 2006, was diagnosed with a bi-polar disorder. His condition required that he take long term medical leave from his job. He was terminated from employment after one year due to the fact that he was still unable to return to work. During this period, the Applicant was financially unable to make the bankruptcy payments according to schedule, as further discussed below.

The Applicant has filed for bankruptcy protection on four separate occasions, namely November 1999, July 2001, April 2005, with his most recent filing occurring in September 2007. (Government Exhibits 9, 10, 11 and 12). In November 1999, the Applicant first filed for Chapter 13 bankruptcy protection. This action was dismissed in May 2001. In July 2001, he filed for Chapter 7 bankruptcy. This action was discharged

in October 2001. In April 2005, after losing more than \$25,000 in a failed attempt to complete a rent to own house purchase, he filed for Chapter 13 bankruptcy. This bankruptcy petition was dismissed in August 2007, after he failed to make the required payments according to the trustee's schedule. The Applicant re-filed for Chapter 13 bankruptcy protection in September 2007. This action was dismissed in December 2008, due to what the Applicant explained was the fault of the trustee's office which failed to automatically withdraw funds directly from his pay after several attempts to submit the payroll information.

The Applicant intends to pay all of his delinquent debt. He states that he is currently attempting to pay his delinquent debts out of his current salary. (See Applicant's Answer to the SOR). In April 2009, he was laid off from his job, but he was hired by another company in May 2009. He is working to settle his debts and clearing up his credit report. Presently, the Applicant financial indebtedness has not been resolved.

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 18-19, 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 behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- 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.

Giving the Applicant the benefit of the doubt concerning the debts he denied, Applicant is currently indebted to at least thirteen separate creditors in the amount of approximately \$ 37,000. Circumstances beyond his control are partially responsible for his financial demise. Namely, his bi-polar disorder diagnosis in 2006, and related periods of unemployment, coupled with medical bills, contributed to some of his financial demise. However, Applicant's financial indebtedness started well before his discharge from the Army in 2004, and his bi-polar diagnosis in 2006. His financial problems were evident in 1999, when he first filed for bankruptcy. Since then, although he has filed for Bankruptcy four times, the Applicant has not made any significant progress in resolving his debts. Although he plans on paying all of his debts, he has been unable to do so, and they all remain outstanding. 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 his regular monthly payments in addition to making payments on his delinquent debts.

As of yet, none of the delinquent debts in the SOR have been paid. He is just starting the financial rehabilitation process and obviously has a long way to go before his delinquent debts 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. 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.

Other than his bi-polar diagnosis and periods of unemployment, the record is void as to any evidence in mitigation. There is no 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 and they are not isolated. 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).

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.
- 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.

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