



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 08-10092
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Department Counsel
For Applicant: Jim Green, Attorney At Law

June 23, 2010

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on June 23, 2008. (Government Exhibit 1.) On January 8, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. The action was taken under Executive Order 10865, "Safeguarding Classified Information Within Industry" (February 20, 1960), as amended; Department of Defense Directive 5220.6, "Defense Industrial Personnel Security Clearance Review Program" (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense (DoD) for SORs issued after September 1, 2006.

The Applicant responded to the SOR on February 1, 2010, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on March 9, 2010. A notice of hearing was issued on March 30, 2010, scheduling the hearing for May 19, 2010. The Government presented eight exhibits, referred to Government Exhibits 1 to 9, which were admitted without objection. The

Applicant presented twenty exhibits, referred to as Applicant's Exhibits A through T, which were admitted without objection. The Applicant testified on his own behalf. The record remained open until June 2, 2010, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted five Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits 1 through 5, which were admitted without objection. The official transcript (Tr.) was received on June 3, 2010. 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, the testimony and the exhibits. The Applicant is 33 years old, and has an Associates Degree in Occupational Studies, and an Airframe and Powerplant certificate. 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 the allegations set forth under this guideline. The delinquent debts set forth in the SOR totaled in excess of \$ 23,000.00. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated July 9, 2008; June 17, 2009; October 3, 2009; February 25, 2010; and May 15, 2010, collectively reflected each of the delinquent debts set forth in the SOR. (Government Exhibits 5, 6, 7 ,8 and 9.)

The Applicant served on active duty in the United States Marine Corps from March 1999 to June 2004. (Applicant's Post-Hearing Exhibit 2.) He was married and had a child in 2001. In 2004, he was going through a separation and divorce from his wife. It was at this time that his financial problems began. As a result of his divorce, he was required to pay child support. (Applicant's Post-Hearing Exhibit 1.) He was unable to find suitable work. He got a part time job, but only earned minimum wage and could not make ends meet. When he was able to obtain full time jobs, he still did not earn enough to cover his bills. During this time, he spend most of his money on child support, which he has consistently paid. (Applicant's Exhibit J.)

To improve his financial situation, he decided to go to college. He attended college from 2006 to 2008, obtained a degree, and took out student loans to accomplish

this. Most of the debt set forth in the SOR, except his student loans, were delinquent credit cards that were acquired during his marriage that only increased after he left the military. He became aware of the extent of the debt when he started working for his current employer in 2008. Since then, he has paid off each of the debts, except his student loans. His six student loans, totaling approximately \$17,475.00 were in deferment and are not delinquent. The Applicant has been making the required monthly payments since April 2009. He is currently in the process of consolidating his student loans and he plans on making the required monthly payment until the debt is paid in full. (Applicant's Exhibits H and I, and Post-Hearing Exhibits 3 and 4.)

The Applicant was indebted to the following creditors: A debt to a creditor in the amount of \$872.00 has been paid. (Applicant's Exhibit B and Tr. p. 55 - 56.) A debt to a creditor in the amount of \$54.00 has been paid. (Applicant's Exhibit E and Tr. p. 57.) A debt to a creditor in the amount of \$361.00 has been paid. (Applicant's Exhibit E and Tr. p. 57.) A debt to a creditor in the amount of \$314.00 has been paid. (Tr. p. 60.) A debt to a creditor in the amount of \$3,492.00 has been paid. (Applicant's Exhibits D, F and Tr. pp. 81-82.) A debt to a creditor in the amount of \$632.00 has been paid. (Applicant's Exhibit 3 and Tr. p. 85.) A debt to a creditor in the amount of \$278.00 has been paid. (Tr. p. 86.)

The Applicant started working for his current employer in April 2008. He is now earning twice as much as he had previously. (Applicant's Exhibit G.) His personal financial statement that accurately reflects his current monthly budget indicates that after paying his regular monthly expenses, he has approximately \$791.00 left at the end of the month. (Applicant's Exhibit A.) He anticipates that his consolidated student loan payment will be approximately \$234.00 monthly. (Applicant's Post-Hearing Exhibits 3 and 4.) He has sufficient monies left at the end of the month to comfortably make the student loan payments. He has a roommate and is sharing the living expenses. He is also able to save for retirement.

Numerous letters of recommendation were submitted on behalf of the Applicant. His manager, supervisors, co-workers, professional associates and friends attest to his responsible nature, good judgment, and positive attitude. He is extremely knowledgeable and proficient as an aircraft technician. He has received a special merit pay increase of 13% after only eight months with the company, and has received three special recognition awards during his employment for his outstanding workmanship, dedication and positive attitude. He is also described as a man of great integrity, and intelligence. He is considered to be a vital asset to the team and highly recommended for a position of trust. (Applicant's Exhibits K, L, M, N, O, P, R, S and T.)

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 condition 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 circumstance;

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 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 predicated 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.

The Applicant's excessive indebtedness was caused by a divorce and periods of unemployment and/or under-employment beginning in 2004, when he left the military. His difficulties in finding suitable employment prevented him from being able to pay his bills. Since April 2008, he has been working for his current employer, has earned substantially more money, and has resolved all of his delinquent debts. His student loans are in the process of being consolidated and he plans to continue making the required monthly payments to resolve them. He is living frugally and responsibly. He understands the importance of paying his bills on time and living within his means. He is current with all of his monthly expenses, and demonstrates financial rehabilitation. He has presented sufficient evidence to demonstrate a track record of financial responsibility.

There is sufficient 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. 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 circumstance* and, 20(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* also apply. The Applicant has indeed made 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).

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 good judgement, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, and other characteristics indicating that the person may properly 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 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.

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