



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-10200
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: *Pro Se*

September 22, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) dated January 24, 2008. (Government Exhibit 1). On April 9, 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 May 5, 2009, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on July 21, 2009. A notice of hearing was issued on July 22, 2009, scheduling the hearing for August 21, 2009. The Government offered seven exhibits, referred to as Government Exhibits 1 through 7, which were received without objection. Applicant offered twelve exhibits, referred to as Applicant's Exhibits A through

L, which were received without objection. He also testified on his own behalf. The record remained open until close of business on August 28, 2009, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted two Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A and B. The transcript of the hearing (Tr.) was received on August 28, 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 31 years old and has completed about two years of college. He is employed by a defense contractor as a Program Analyst 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, namely that he was indebted in the amount of approximately \$88,000.00 in delinquent debt, most of which was an equity line of credit used to pay off his ex-wife. Credit Reports of the Applicant dated March 31, 2008; November 1, 2008; June 9, 2009; and August 16, 2009; collectively reflect each of the outstanding debts listed in the SOR. (Government Exhibits 4, 5 6 and 7). The Applicant has been employed for a defense contractor since October 2007.

The Applicant joined the United States Marine Corps in 1995, and spent nine years and eleven months of successful service. He was honorably discharged in 2005. His military record includes three combat tours in Iraq, in 2003, 2004 and 2005, and show that he was a highly decorated Marine with a stellar career. (Applicant's Exhibit I).

The Applicant explained that a series of unexpected circumstances caused or contributed to his delinquent debt. In 1998, he married another active duty Marine and they had two children. Things did not work out, they physically separated in 2004, and were divorced in 2006. Applicant assumed most of the debt incurred during the marriage, and although he and his ex-wife have joint custody of their two children, the children reside with the Applicant the majority of the time. His ex-wife decided that she

no longer wanted responsibility for the children, and she pays no child support to the Applicant. Applicant was forced to leave the Marine Corps because he was left as a single parent with the possibility that he would be deployed without anyone to take care of his children. Although it was a difficult decision, he left the military in 2005, to provide a stable environment for his children. The Applicant was able to find employment, but he did not earn as much as he had previously in the military. He then took a job in residential real estate that was commission based, and he did not do well. This caused more financial difficulties and his bills became delinquent.

The debts set forth in the SOR were incurred during the marriage, and as of February 9, 2009, they remained owing. The Applicant was indebted to a creditor in the amount of \$516.00. The Applicant has paid off the debt and it is no longer reflected as owing on his most recent credit report. (Applicant's Exhibit A and Government Exhibit 6).

Applicant disputes the debt to a creditor in the amount of \$2,729.00. He contends that the debt was never his debt. When he learned of the debt in 2006, he contacted the creditor and informed them that he never authorized the account, that it was apparently a situation of stolen identity and a fraudulent credit card. The creditor acknowledged the fact and told the Applicant that it would be removed from his credit report. (Tr. pp. 35 - 36). This was not done and the debt remains on the Applicant's credit report as owing.

Applicant was indebted to a creditor in the amount of \$261.00. Applicant contends that the debt has been paid, as the debt is no longer reflected on his credit report as owing. (Applicant's Exhibit C and Government Exhibit 6).

Applicant was indebted to a creditor in the amount of \$3,632.00. Since April 2009, the Applicant has been making monthly payments of \$100.00 toward the debt to get it resolved. The creditor has agreed to this payment plan. (Applicant's Exhibit D).

Applicant was indebted to a creditor in the amount of \$6,342.00. The Applicant has been making monthly payments of \$100.00 toward the debt to get it resolved. He currently owes approximately \$5,842.00. The creditor has agreed to this payment plan. (Applicant's Exhibit E).

Applicant was indebted in the amount of \$78,108.00. He explained that in 2005, he obtained an equity line of credit on his home and gave most of the money to his ex-wife as a divorce settlement. Although he had tried to keep the house, his home was foreclosed upon in April 2008, and the house was sold. Applicant is making payments of \$100.00 monthly toward the debt to resolve it. He currently owes \$75,008.68. (Applicant's Exhibit F).

Applicant has recently reduced his monthly expenses in order to use the disposable money to pay off his delinquent debt. He has moved close to his job, and is

able to save about \$400.00 monthly in gas. He plans to resolve his indebtedness as soon as possible. (Tr. p. 47).

Letters of recommendation from his Security Manager, other professional colleagues and a Retired Marine Colonel, who have known the Applicant for many years, indicate that the Applicant is a high performer who accomplishes all tasks to the highest standards. He is considered an honorable man, with a strong sense of integrity, responsibility, ambition, trustworthiness and good judgment. (Applicant's Exhibit G and Post-Hearing Exhibit B).

Among the Applicant's military awards are the Good Conduct Medal a Certificate of Achievement, and a Navy and Marine Corps Achievement Medal. (Applicant's Exhibit H).

Excerpts from the Applicant's military records reflect that he was on the Commanding General's Honor Roll in 2001, completing the Sergeants Course class with a final cumulative average of 96.94. He was an excellent leader, high performer, consistently recommended for promotion, and considered one of the finest and exceptionally qualified Marines. (Applicant's Exhibit I).

Applicant's most recent performance appraisal reflects ratings of "consistently above acceptable" and fully acceptable" in every category. (Applicant's Post-Hearing 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. 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.

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:

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 her 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 evidence also shows that circumstances largely beyond the Applicant's control contributed to his financial indebtedness. Applicant's divorce mainly caused his financial problems. His ex-wife's refusal to assist him with their children, his decision to separate from the Marine Corps and take a lower paying job, and his assumption of the debt incurred during the marriage, together caused serious financial difficulties. Recently, he has addressed each of his creditors. He has paid off several of the creditors and set up payments plans with the others to resolve them as soon as possible. He must continue to demonstrate financial responsibility. Under the circumstances, the Applicant has done his best to be responsible and has made a good

faith effort to resolve his debts. He realizes that he must continue to pay off his delinquent debt, and live within his means in order to pay his bills on time. In the event that he has any future financial problems, his security clearance would immediately be in jeopardy. However, at the present time, 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, his favourable character references and 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, 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.

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