



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



In the matter of:)
)
-----) ISCR Case No. 08-10211
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

April 22, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) dated June 15, 2008. On December 17, 2008, 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 on a December 29, 2008, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on February 23, 2009. A notice of hearing was issued on February 26, 2009, scheduling the hearing for March 17, 2009. At the hearing the Government presented five exhibits, referred to Government Exhibits 1 through 5. The Applicant presented seven exhibits, referred to as Applicant's Exhibits A through G, and called one witness. He also testified on his own behalf. The record remained open until close of business on March 26, 2009, to allow the Applicant to submit additional documentation. The Applicant submitted seven Post-Hearing Exhibits, referred to as 1 through 7. The official transcript (Tr.) was received on March 24, 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 FORM and the exhibits. The Applicant is 33 years old, married and has a Bachelors of Science Degree in Architecture. He is employed by a defense contractor as a Senior 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 each of the allegations set forth in the SOR under this guideline. Credit Reports of the Applicant dated July 4, 2008, November 17, 2008, and February 19, 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 nine separate creditors totaling approximately \$ 140,000.00. (Government Exhibits 2, 3 and 4).

The Applicant explained that in 2002, he decided to chase his dream to become an independent real estate developer. He set his primary goal to build five luxury homes before the age of thirty. Although he was employed with a large company as an engineer, he quit his job to devote his full time effort to build his first home. From July 2004 to September 2006, he became wholly invested in this real estate project that was supposed to be profitable for him, but was not. Difficulties along the way caused the profit margin to deplete. Due to the unexpected downturn in the real estate business and delays caused by heavy rainy seasons, hillside slope problems requiring retaining walls, and two public hearings for hauling routes, the property did not sell for what he had expected. The project took much longer to complete, actually two years. At one point, the house actually went into foreclosure, but the Applicant found a lender to bail him out so that he could finish the house. In January 2006, the Applicant put the house on the market for 1.5 million dollars and it sold for 1.29 million. Applicant was able to pay off the mortgages but was unable to pay off the excessive credit card debt he had accumulated to help finance some of the construction, building materials and lumber, when the lenders stopped financing the project. (See Applicant Exhibit E and Applicant Post-Hearing Exhibit 7).

As a result, the Applicant became indebted to each of the creditors set forth in the SOR. He is indebted to a bank for a delinquent credit card debt in the amount of \$6,691.00; a debt to a creditor in the amount of \$6,770.00; a debt to a creditor in the

amount of \$2,530.00; a debt to a bank for a delinquent credit card in the amount of \$10,218.00; a debt for a deficiency judgment on a repossessed vehicle in the amount of \$12,606.00; a debt to a jeweler in the amount of \$3,748.00; and a gambling debt to a hotel/casino in Las Vegas in the amount of \$10,000.00. Applicant has not paid any of these debts. He states that he does plan to pay them as soon as he can afford to.

During this same period, the Applicant foresaw other opportunities and purchased other property in the same area. His goal was to either develop, remodel or renovate the properties and then ultimately sell the real property for a profit. (Applicant Post-Hearing Exhibits 4, 5 and 6). One of these properties he still owns has no mortgage, but is encumbered by a tax lien. Applicant expects to sell the property, satisfy the lien, and be able to pay off all of the delinquent debts set forth in the SOR. This property has been for sale now for about two years. It has been in escrow twice but the buyers could not perform. Applicant has reduced the price to \$175,000.00. (Applicant Exhibits C and D). His wife also plans to get a job that will assist with the expenses.

Applicant explained that in September 2006, he was unemployed for a while and then worked part-time for a company and tried to maintain his credit card payments but was unable to do so. In July 2007, he and his wife got married and they moved out of state. (Applicant Exhibit F). They both became employed out of state, but were unable to afford to pay the Applicant's outstanding delinquent credit card debt. His wife then got pregnant, quit her job, and they moved back to their home state. The Applicant became employed with his current employer in June 2008.

Recently, Applicant met with a debt counselor to obtain assistance in resolving his delinquent debts. After going over his monthly household expenses, the proposed action plan would place the Applicant in a negative \$1,000.00 a month. He stated that if he were to try to follow the payment plan, he would not be able to survive. (Tr. p. 26 and Applicant Exhibit B). Applicant testified that he has paid off four of his credit cards, one of his wife's student loans, and is currently paying \$1,000.00 a month toward his wife's credit card bills. (Tr. pp. 55 and 59). None of the credit card debt he asserts he has paid is listed in the SOR.

In August 2008, a state tax lien was placed against the Applicant in the amount of approximately \$27,422.00. Applicant has set up an automatic withdrawal monthly installment plan with the state tax authorities in the amount of \$400.00 to resolve the debt. This payment plan has not yet started. (Applicant Post-Hearing Exhibit 2).

In April 2007, a federal tax lien was placed against the Applicant in the amount of approximately \$65,426.00. Applicant explained that in regard to his tax liability, his problems began when he sold a piece of property (a vacant lot that he had previously purchased) and profited approximately \$100,000.00. His plan was to do a 1031 exchange but it did not work out that way. He now owes capital gains taxes or ordinary income taxes. His federal tax liability on the sale of the property is now \$65,000.00 and is still accruing interest.

Applicant's Performance appraisal for the rating period from January 2008 through December 2008 reflects "excellent" ratings in every category. (Applicant Exhibit

A). Applicant also received a bonus from his employer in February 2009, for outstanding performance on the job. (Applicant Post-Hearing Exhibit 3).

Applicant's mother-in-law testified that she has known the Applicant for at least fifteen years and that he has a strong work ethic, and is reliable and competent. She is currently leasing her triplex to the Applicant and her daughter. (Tr. p. 71-78).

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.

19(f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern.

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 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, 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.

Applicant is indebted to nine separate creditors in the amount of approximately \$140,000.00. Circumstances beyond his control are partially responsible for his financial demise. Namely, the downturn in the real estate market coupled with construction delays caused reduced profits from the sale that ultimately caused unexpected financial expenses. Bad business decisions also contributed to his financial crisis. Since leaving the home building business, and since June 2008, when he started working full time for his current employer, the Applicant has not paid any of the delinquent debts set forth in the SOR. He recently entered into a payment plan with state tax authorities, but has not started paying off the debt. His federal tax liability continues to accrue. Although he plans on paying all of his debts when his property is sold, he has been unable to sell it, and the debts 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. 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.

Under Guideline F (Financial Considerations), Disqualifying Conditions *19(a) inability or unwillingness to satisfy debts, 19(c) a history of not meeting financial obligations and, 19(f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern* apply. Arguably, 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, this mitigating condition is outweighed by the extent of the debt that remains outstanding, and Applicant's lack of action to resolve it. His financial problems remain current and they are not isolated. He has not initiated a prompt, good faith effort to repay his overdue creditors or otherwise resolve his debts. Other than his favorable performance evaluation, and testimony from

his mother-in-law as to his reliability and trustworthiness, the record is void as to any evidence in mitigation. There is no evidence of financial rehabilitation at this time. 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.

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