



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-10432
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

April 29, 2010

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) dated June 12, 2008. (Government Exhibit 1.) On April 16, 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 on May 18, 2009, and he requested a hearing before a DOHA Administrative Judge. This case was originally assigned to another Administrative Judge on June 3, 2009. The matter was reassigned to the undersigned on August 31, 2009. A notice of hearing was issued on September 15, 2009, scheduling the hearing for November 18, 2009. At the hearing the Government presented twelve exhibits, referred to Government Exhibits 1 to 12, which were admitted

without objection. The Applicant presented fourteen exhibits, referred to as Applicant's Exhibits A through N, and testified on his own behalf. The record remained open until November 28, 2009, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted three Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits 1 through 3, which were admitted without objection. The official transcript (Tr.) was received on December 2, 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, the testimony and the exhibits. The Applicant is 46 years old, and has an Associates Degree in Computer Science. He is employed by a defense contractor as a Data Entry Inventory Specialist 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 joined the United States Army in June 1981, at the age of eighteen, and was assigned to an elite unit. Applicant exemplified a model soldier for eighteen years of service. During this period, he held a security clearance and completed four combat tours: Operation Urgent Fury in Grenada in 1983, Operation Desert Shield in Saudi Arabia in 1990, Operation Desert Storm in Iraq in 1991, and Operation Provide Comfort in Iraq in 1991. He was promoted from E-1 to E-7, and achieved a great level of success. While in the Army, the Applicant also completed 3.5 years of college course work, and obtained an Associate's Degree in computer science. Applicant was married from 1986 to 1993, and had one daughter. He and this wife divorced in 1993. Applicant married his current wife in 2001, who is on active duty in the Air Force, and they have three children from their marriage.

The SOR sets forth nine delinquent debts. The Applicant admits allegations 1(a), and 1(d), and denies the others. (See Applicant's Answer to SOR.) Credit reports of the Applicant dated July 9, 2008; March 23, 2009; June 2, 2009; and November 14, 2009, collectively reflect each of the outstanding debts. (Government Exhibits 9, 10, 11, 12.) After testimony from the Applicant, it appears that several of the debts are

duplications of others. The Applicant had only five outstanding debts, not nine. He attributes his indebtedness to short periods of unemployment. He was most recently unemployed from December 2007 to June 2008, and fell behind on his child support payments. (Government Exhibit 3). The record also indicates that he made efforts to assist his mother financially during her illness which caused him to turn to credit cards to pay his own bills. Since becoming more aware of his debts and realizing the importance of paying them on time, the Applicant has paid off three of the debts and is making payments of \$420.00 monthly toward another. The Applicant has contacted the creditor concerning the fifth and final debt, and is in the process of resolving it. (Applicant's Post-Hearing Exhibit 3).

1(a). and 1(h). of the SOR reflect the same debt. A judgment entered against the Applicant in August 2002, by a rental car company in the amount of \$3,772.00 remains outstanding. Applicant has done some inquiry, but has not set up payment plans or started to reduce the debt. (Applicant's Exhibit A, and Applicant's Post-Hearing Exhibit 3).

1(b). This delinquent debt owed to a cable company in the amount of \$202.00 has been paid. (Tr. p. 36 and Applicant's Post-Hearing Exhibit 1).

1(c). A delinquent debt owed to a creditor in the amount of \$201.00 has been paid. (Tr. p. 37 and Post-Hearing Exhibit 1).

1(d)., 1(e)., 1(f). and 1(g). of the SOR reflect the same debt. This delinquent debt owed to a state for back child support in the amount of approximately \$16,823.00 is being paid through automatic paycheck deductions in the amount of \$420.00 per month. (Tr. P. 40 and Applicant's Exhibit N).

1(i). A delinquent debt owed to a creditor in the amount of \$269.00 has been paid. (Applicant's Post-Hearing Exhibit 3).

Applicant's financial statement dated January 13, 2009, reflects that after paying his regular monthly expenses, he has a net remainder of approximately \$7,000.00 left at the end of the month that will allow him to pay to pay his delinquent debts. (Government Exhibit 4).

Paragraph 2 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct.

The Applicant admits the allegation set forth under this guideline. In 1993, upon returning from the Gulf War, the Applicant learned that his wife had been having an affair, and he filed for divorce. Medical records that contain a neuropsychological report of the Applicant dated February 2000, which reflects back in time, indicates that in 1991, the Applicant started suffering from Major Depressive Disorder, which included two episodes of major depression. One, in 1991, and another beginning in 1997, that

continued through the time he committed the offenses described below. The Applicant's symptoms included depression, significant weight loss, mild to moderate deficits in attention, memory and reasoning as was similar to those among other Gulf War veterans, and general anxiety. (Applicant's Post-Hearing Exhibit 2). In the summer of 1997, the Applicant's mother was diagnosed with breast cancer and his father left her after 39 years of marriage. It was during this period that the Applicant committed the crimes that caused his military career to collapse as described below. Applicant has received counseling and medication for his condition. (Applicant's Post-Hearing Exhibit 2.)

In about July 1999, the Applicant was tried and convicted at a General Court Martial for violating Article 121 (Larceny and wrongful appropriation); Article 123 (Forgery); and Article 134 (Prejudicial Conduct) of the Uniform Code of Military Justice. The Applicant testified that he had worked his way up through the ranks and had a stellar career as an NCO. He states that he had to work harder than most soldiers to achieve what he did, and he received many awards and accolades. (Tr. p. 44).

For the purpose of obtaining credit, the Applicant forged his roommate's signature, and utilized her social security number and other identification data to obtain various lines of credit (credit cards), incurring a total debt of \$9,326.03. He used these credit cards to purchase goods and services. After being rejected for a credit card utilizing his own name, the Applicant also submitted a fraudulent credit card application bearing the name of his daughter. Applicant was subsequently awarded the card with which he made charges. (Government Exhibit 7.) Applicant stated that he ultimately paid off all of the debt he wrongfully incurred, and the card was closed.

In addition, the Applicant needed a credit card to conduct military business, so while another one of his other roommate was deployed overseas, he forged his roommate's signature and opened accounts in his roommates name. When his roommate returned, his roommate tried to open an account and was denied. His roommate learned that the Applicant had opened accounts in his name and charged on the accounts. He told the Applicant to pay off the debt. Applicant did not comply with his roommate's request as swiftly as he requested and he reported the Applicant to the command. There was an Article 32 investigation and then the Applicant was court-martialed. The Applicant pled guilty, and was found guilty of numerous Specifications under both Articles 121 and 123. He was sentenced to be reduced in rank from E-7 to E-1, to forfeit all pay and allowances, to be confined for six months, and to be discharged from the United States Army with a Bad Conduct Discharge. In July 1999, the Applicant was discharged from the United States Army with a Bad Conduct Discharge. (Government Exhibits 5, 6 7.) Applicant's security clearance was revoked. (Government Exhibit 8.)

The issue was raised that the Applicant did not receive the official separation documentation setting forth his bad conduct discharge from the Army. (Tr. p. 57.) The Applicant testified that upon his release from jail, he returned to the unit and continued

working for about two or three months, without being paid. In January 2000, his commander asked him why he was still there if he was not getting paid. (Tr. pp. 60 - 61 and Tr. p. 65.) At some point, the commander told him after looking at his LES that showed no pay, that, "since you're not getting paid, you're not in the Army anymore." (Tr. p. 66.) Government Exhibit 13, is a copy of the Applicant's discharge from the United States Army.

The Applicant is remorseful and disappointed by his criminal conduct, which ruined his military career. He admits his bad decisions and poor judgment. Since then, and for the past eleven years, he has worked hard to demonstrate integrity, trustworthiness and good judgment. He acknowledges that he has learned a serious lesson from his mistakes that will never happen again.

Applicant's military NCO evaluation reports for the years 1996, and 1997, indicate that he performed in the "excellence" or "success" categories in every instance. (Applicant's Exhibits B and C).

Applicant received numerous military awards that include a Good Conduct Medal, (fifth award), the Army Commendation Medal and the Meritorious Service Medal. (Applicant's Exhibits D, E and F.)

A letter from the Applicant's current Program Manager dated November 17, 2009, reflects that the Applicant is considered dependable, reliable and has an excellent rapport with staff and clientele. He is highly respected and recommended for a position of trust. (Applicant's Exhibit H.)

Applicant received Certificates of Appreciation on January 20, 2009, and on September 29, 2009, from his current employer. (Applicant's Exhibits G and L.)

Letter from customers who currently work with the Applicant reflect that he is a family man with integrity. He is also hardworking and well respected by others. He is recommended for a position of trust. (Applicant's Exhibits I and J.)

A letter from the Applicant's minister of his church dated November 16, 2009, indicates that the Applicant brings a wealth of knowledge of leadership, management, energy, and the ability to relate and work well with others. He is considered to be a man of integrity, loyalty, honesty and competency. (Applicant's Exhibit K.)

Paragraph 3 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he has engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The Applicant admits allegation 1(b), and denies the others set forth in this guideline. Applicant completed a Questionnaire for National Security Positions dated June 12, 2008. Question 27(d) of the application asked the Applicant if in the last seven years, he had any judgements against him that have not been paid? The Applicant answered, "NO." This was a false answer. The Applicant failed to disclose that in August 2002, a judgment was entered against him in the amount of \$3,772.00. Applicant explained that he did not intentionally conceal any information from the Government on his application. He had not reviewed his credit report and was unaware of the judgment at the time, and simply forgot about it. (Tr. p. 40.)

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.(d) the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts.

Guideline J (Criminal Conduct)

30. *The Concern.* Criminal activity creates a doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Conditions that could raise a security concern:

31.(a) a single serious crime or multiple offenses;

31.(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Conditions that could mitigate security concerns:

32.(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

32.(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Conditions that could raise a security concern:

16.(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations;

(4) evidence of significant misuse of Government or other employer's time or resources.

Conditions that could mitigate security concerns:

17.(c) The offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

17.(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

17.(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

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, criminal conduct and personal conduct, 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), has engaged in criminal conduct (Guideline J), and has demonstrated poor personal conduct (Guideline E). 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.

In regard to the Applicant's finances, he was actually indebted to five separate creditors, not nine. He has since paid off three of the debts, is making payments toward

the other, and is working to resolve the last one. Applicant understands his responsibility to completely pay off all of the debts set forth in the SOR. At the present time, he has 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 introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

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. Although Mitigating Condition 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* applies, and is controlling. The Applicant has initiated a prompt, good faith effort to repay his overdue creditors or otherwise resolve his debts. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

The Applicant's criminal conduct and related personal conduct in the military in 1999, was despicable. He committed the offenses of Forgery, Larceny of Private Property, and Prejudicial Conduct against his fellow soldiers and the Government. As a result, he was severely punished for these crimes. This criminal conduct occurred eleven years ago and has not recurred. Since then, the Applicant has not engaged in any criminal misconduct of any sort, and in fact has shown that he can turn his life around after hitting rock bottom, and become a productive citizen in society. For the past eleven years, he has demonstrated that he is not a criminal. In fact, he is well respected and comes highly recommended for a position of trust among his supervisors, professional colleagues, friends and minister, all who know him well.

Under Guideline J, Criminal Conduct, Disqualifying Conditions, 31.(a) *a single serious crime or multiple offenses* and 31.(c) *allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted* apply. I have also considered Mitigation Conditions 32.(a) *so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*, and 32.(d) *there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement*. They also apply in this case.

Furthermore, I find that the Applicant did not intentionally falsify his security clearance application when he failed to list the judgment against him. He did not know or remember the extent of his indebtedness, or recall the judgement when he completed his security clearance application.

Under Guideline E, Personal Conduct, Disqualifying Conditions:

16.(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information; (2) disruptive, violent, or other inappropriate behavior in the workplace; (3) a pattern of dishonesty or rule violations; and (4) evidence of significant misuse of Government or other employer's time or resources apply.

However, under the particular facts of this case, Mitigating Conditions 17.(c) *The offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;* 17.(d) *the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;* and 17.(e) *the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress also applies.* Accordingly, I find for the Applicant under Guideline E.

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information, including the favorable evaluations and letters of recommendation. For eighteen years, the Applicant honorably served our country in the United States Army, which includes four combat tours. This outstanding contribution cannot be overlooked. In addition, for the past eleven years, except for his few delinquent debts, he has overall demonstrated good judgment. 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, willingness to comply with rules and regulations, or 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 Paragraphs 1, 2 and 3 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.
- Subpara. 1.i.: For the Applicant.

Paragraph 2: For the Applicant.

- Subpara. 2.a.: For the Applicant.

Paragraph 3: For the Applicant.

- Subpara. 3.a.: For the Applicant.
- Subpara. 3.b.: For the Applicant.
- Subpara. 3.c.: 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