



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-11305
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Department Counsel
For Applicant: *Pro Se*

January 25, 2010

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on November 20, 2007. (Government Exhibit 5). On February 6, 2008, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, (as amended) issued a Statement of Reasons (SOR) to the Applicant, which detailed 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 clearance should be denied or revoked.

The Applicant responded to the SOR in writing on March 16, 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 10, 2009. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on August 13, 2009, and he submitted a reply on September 11, 2009. The case was assigned to the undersigned for resolution on October 15, 2009. Based upon

a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

FINDINGS OF FACT

The Applicant is 32 years old. He is employed by a defense contractor as a Systems 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). 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 clearance because he is financially overextended and at risk of having to engage in illegal acts to generate funds.

The SOR sets forth that the Applicant is indebted to at least ten different creditors that involve defaulted auto loans, credit card accounts, other consumer debts, and student loans totaling approximately \$ 28,341.00. Applicant admits several of the debts and denies others, asserting that he has either satisfied the debt and/or is no longer responsible for it. (See Applicant's Response to FORM). Credit reports of the Applicant dated December 12, 2007, December 17, 2008, and December 23, 2008, reflect each of the delinquent debts as owing. (Government Exhibits 6,8 and 9).

In February 2005, the Applicant left active duty. He explained that at that time, unbeknownst to him, having to change from USAA insurance to another company, his mortgage insurance increased, which caused his mortgage payment to increase from \$1,536.00 to \$1,941.00 monthly. His car payment also increased from \$650.00 monthly to \$695.00. This unexpected significant financial increase triggered a number of delinquent debts that the Applicant was not prepared for. Although the Applicant continued to work full time, he was not in a financial position to tackle his delinquent debt.

In August 2009, the Applicant became a self-employed government contractor. Since his most recent credit report, he has been working hard to resolve his delinquent debts. He has contacted each of the creditors, inquired into the debt, and has provided supporting documentation showing that he has either paid off the debt in full, set up a payment plan to pay it, or has otherwise resolved the debt. He plans to incur no new debt.

Listed in the SOR are the following debts; a debt in the amount of \$12,826.00 for a repossession and resale of a vehicle remains owing (allegation 1(a)). The Applicant has established a payment plan with the creditor in the amount of \$100.00 monthly and plans to continue with the payments until the debt is paid in full. (Applicant's Answer to the FORM).

Debts owed to creditors in the amount of \$1,100.00 (allegation 1(b)) and \$1,230.00 (allegation 1(c)), are not the Applicant's responsibility. The Applicant has provided letters from the creditors acknowledging that he was only an "authorized user" of his wife's credit cards and has no financial responsibility for the account balance. (Applicant's Answer to the FORM and attachments B and C).

In regard to a debt owed to creditor in the amount of \$1,357.00, Applicant has disputed the debt, and received a letter from the creditor indicating that the debt was sold to another creditor and therefore said creditor has no reportable financial interest against the Applicant concerning the debt. The letter also indicates that there is a zero balance on the account with the bank that the debt had been sold to (allegation 1(d)). (Applicant's Answer to the FORM and attachment D, and Applicant's Post Hearing Exhibit).

Letters from the creditors concerning debts in the amount of \$816.00 and \$83.00 indicate that the collection accounts have been closed and all adverse information has been removed from the Applicant's credit report concerning the debts. (allegations 1(e) and 1(f)). (Applicant's Answer to the FORM attachment E and F).

A debt owed to a creditor in the amount of \$695.00 has been paid (allegation 1(g)). A debt owed to a creditor in the amount of \$1,880.00 has been paid (allegation 1(h)). (Applicant's Answer to the FORM and attachments G and H).

Applicant denies a debt owed to a creditor in the amount of \$7,286.00 for a vehicle. He submitted a copy of the car title and there is no lien holder shown. (Applicant's Answer to the FORM and attachment I).

A debt owed to a creditor in the amount of \$1,058.00 has been paid (allegation 1(j)). (Applicant's Answer to the FORM and attachment J).

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.

Conditions that could raise a security concern:

- 19.(a) inability or unwillingness to satisfy debts;
- 19.(c) a history of not meeting financial obligation.

Conditions that could mitigate security concerns:

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 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, the security of classified industrial secrets 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 clearance 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.

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. The Applicant has contacted each of the creditors and either paid off the debt, set up a payment plan to do so, or resolved the debt. He understands the importance of paying his bills on time and living within his means. Under the circumstances, he has made a good faith effort to resolve his indebtedness, and there is evidence of financial rehabilitation. He has demonstrated that he can properly handle his financial affairs and that he is fiscally responsible. Under the particular facts of this case, the Applicant must continue to pay off his debts in a timely fashion and maintain a clean credit report or his security clearance will again be in jeopardy.

Under Guideline F (Financial Considerations), Disqualifying Conditions 19.(a) *inability or unwillingness to satisfy debts*; and 19.(c) *a history of not meeting financial obligation* apply. However, Mitigating Conditions 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. 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 above, when viewed under all of the guidelines as a whole, support a whole person assessment of good judgement, trustworthiness, reliability, candor, and a willingness to comply with rules and regulations, and/or other characteristics indicating that the person may properly safeguard classified information.

I have considered all of the evidence presented, and it mitigates the negative effects of his financial indebtedness and the effects that it can have on his ability to 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 SOR.

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.

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge