



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-11769
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 July 31, 2008. (Government Exhibit 1). On April 24, 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 June 4, 2009, and requested a hearing before an Administrative Judge. The case was assigned to another Administrative Judge on July 1, 2009. It was transferred to the undersigned Administrative Judge on July 7, 2009. A notice of hearing was issued on July 8, 2009, scheduling the hearing for July 28, 2009. The Government offered five exhibits, referred to as Government Exhibits 1 through 5 which were received without objection. Applicant offered no

exhibits. The Applicant testified on his own behalf. The record remained open until close of business on August 17, 2009, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted a total of nine Post-Hearing Exhibits in no particular order. Six of the exhibits, referred to as Applicant's Post-Hearing Exhibits: Index, A, C, D, H and J, correspond with the lettered allegations set forth in the SOR. Three other exhibits, referred to as Applicant's Post-Hearing Exhibits L, M and N do not correspond with the allegations in the SOR. The transcript of the hearing (Tr.) was received on August 5, 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 41 years old, married and has a high school diploma. He is employed by a defense contractor as a Security Officer 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 7 of the 13 delinquent debts set forth in the SOR under this guideline. Namely, that he is indebted in the amount of approximately \$300,000.00. Credit Reports of the Applicant dated August 13, 2008; January 30, 2009; June 19, 2009; and July 28, 2009; collectively reflect each of the outstanding debts listed in the SOR. (See Government Exhibits 2, 3, 4, and 5). The Applicant has been working for his current employer, a defense contractor, since 2007.

The Applicant explained that a series of unexpected circumstances caused or contributed to his delinquent debts. In 2000, he obtained a fixed mortgage. He and his wife refinanced several times and were eventually given an adjusted rate mortgage in 2007. After six months, their house payments ballooned and they could no longer afford them. In 2008, his wife suffered a stroke and was out of work for about a month and a half. Her work hours were later reduced, and she was eventually laid off in January 2009. Following his wife's stroke, the Applicant left a more lucrative job out of state, for a lower paying one in state. The purpose of this change was to allow him to be closer to his wife to help her with her medical condition, which includes diabetes and high blood pressure. The Applicant has no medical insurance and must pay for his wife's medication out of pocket. His minor daughter also suffers from a minor case of

cerebral palsy. Applicant's wife is currently receiving unemployment benefits in the approximate amount of \$800.00 a month, and is attending college to finish her degree. Applicant is currently netting approximately \$2,500.00 monthly. Given their circumstances, they incurred debt that the Applicant was not able to pay. Recently, he has been working hard to resolve his indebtedness.

A judgment owed to a creditor in the amount of \$16,253.00 was outstanding. (Allegation 1(a).) Applicant's Post-Hearing Exhibit A, reflects that this debt has been paid in full.

A debt to a creditor in the amount of \$110.00 was outstanding. (Allegation 1(c).) Applicant paid off the debt on July 29, 2009. (See Applicant's Post-Hearing Exhibit C).

Applicant testified that he had made payment arrangements concerning a debt owed to a creditor in the amount of \$525.00. (Allegation 1(d).) Applicant's Post-Hearing Exhibit D, indicates that the debt was settled and paid off in full on July 29, 2009.

Applicant set up payment arrangements of \$100.00 a month for 12 months to pay a creditor concerning a debt owed in the amount of \$496.00. (Allegation 1(f).) Applicant realizes the debt will be paid in full before then. (See Applicant's Post-Hearing Exhibit Index).

A debt to a creditor in the amount of \$877.00 was outstanding. (Allegation 1(h).) Applicant contends that he will pay the debt in full by August 22, 2009. (See Applicant's Post-Hearing Exhibit H).

A debt to a creditor in the amount of \$515.00 was outstanding. (Allegation 1(i).) Applicant paid the debt off in full on August 13, 2009. (See Applicant's Post-Hearing Exhibit Index).

A debt to a creditor in the amount of \$114.00 was outstanding. (Allegation 1(k).) Applicant paid the debt off in full on August 13, 2009. (See Applicant's Post-Hearing Exhibit Index).

Applicant's debt to a mortgage company in the amount of \$247,000.00 remains outstanding. (Allegation 1(j).) Applicant is currently in the process of loan modification. (See Applicant's Post-Hearing Exhibit J).

The following debts remain owing and outstanding. Applicant's Post-Hearing Exhibit Index indicates that he is making a good faith effort to take care of them. A debt to a creditor in the amount of \$15,475.00 for a motor home that was repossessed remains outstanding. (Allegation 1(g)). Applicant did not understand that he was still responsible to the creditor for a deficiency on the account despite the fact that he allowed a voluntary repossession. Also, a judgment owed to a creditor in the amount of \$10,814.00 remains outstanding. (Allegation 1(b)). A debt to a creditor in the amount of

\$232.00 remains outstanding. (Allegation 1(l)). A debt to a creditor in the amount of \$2,180.00 remains outstanding. (Allegation 1(m)).

Applicant has incurred no new debt since starting his current employment. He is current with all of his regular monthly expenses.

A letter of recommendation from the Applicant's manager dated June 1, 2006, indicates that the Applicant is one of the their finest employees. He is considered honest, prompt, and hard working and extremely skillful in completing his job responsibilities as well as in accomplishing the overall success of the operation. (Applicant's Post-Hearing Exhibit L).

Applicant received three Army Achievement Medals and various other awards for his successful career in the military. (Applicant's Post-Hearing Exhibit M).

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 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, 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 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.

The evidence shows that circumstances largely beyond the Applicant's control contributed to his financial indebtedness. His wife's stroke in 2007, and related complications, her job lay-off in 2009, his income reduction and change of job in 2007, and a bad mortgage situation, together created a financial situation that was simply unmanageable. Since changing jobs, his wife's health has improved and the Applicant has been able to focus on resolving his delinquent debts. He has contacted his creditors and either paid off the debt or set up payment plans that he is following to resolve them over time. He plans to pay all of his debts and is working hard to do so. The Applicant has demonstrated that he is responsible and that he has made a good faith effort to resolve his debts. He understands that he must live within his means and be fiscally responsible at all times. 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 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, 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). Applicant's circumstances have changed. He has been able to pay off some of his delinquent debts and is continuing to pay off his others.

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, and 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.
- Subpara. 1.g.: For the Applicant.
- Subpara. 1.h.: For the Applicant.
- Subpara. 1.i.: For the Applicant.
- Subpara. 1.j.: For the Applicant.
- Subpara. 1.k.: For the Applicant.
- Subpara. 1.l.: For the Applicant.
- Subpara. 1.m.: 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