



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



In the matter of:)
)
-----) ISCR Case No. 09-00828
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

September 29, 2009

Decision

LOKEY-ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Questionnaires for National Security Positions dated January 16, 2008 and June 5, 2008. (Government Exhibits 1 and 2). On May 8, 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 June 11, 2009, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on July 1, 2009. A notice of hearing was issued on July 8, 2009, and the hearing was scheduled for July 29, 2009. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6. The Applicant presented three exhibits, referred to as Applicant's Exhibits A through C. He also testified on his own behalf. The record remained open until close of business on August 12, 2009, to allow the Applicant the opportunity to submit additional documentation. The Applicant

submitted one Post-Hearing Exhibit referred to as Applicant's Post-Hearing Exhibit A, which was admitted without objection. The official transcript (Tr.) was received on August 13, 2009.

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 55 years old and has a Bachelor's Degree in Criminal Justice. He is employed by a defense contractor as a Security Guard 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. He is indebted to nineteen separate creditors totalling approximately \$100,000.00. Credit reports of the Applicant dated June 19, 2008; February 9, 2009; and July 28, 2009, reflect each of these delinquent debts. (Government Exhibits 3, 4, 5, and 6).

The Applicant explained that from 1980 to October 2005, he and his wife owned and operated a small silk screen printing business, in a low income minority community. They printed T-shirts for the local churches, schools and other organizations. Over the years, the business faced fires, floods, riots and other community mishaps, but the Applicant was able still able to make a decent living. In 2005, although he did not want to close the business, he was forced to due to economic changes. The landlord increasingly raised the rent that started at \$250.00 to \$1,900.00 monthly. Business taxes were high. The business equipment became old and outdated, and the Applicant was unable acquire a small business loan to subsidize the needs of the business, namely because of its location. During difficult periods, he used his credit cards to finance his company in order to stay in business. This, he could not afford.

He also had some tax problems. In 2002, business was so bad he did not take home a salary. He made the mistake of filing his taxes and reporting no income for that year. The Internal Revenue Service (IRS) estimated his tax liability based on previous years and he remains indebted for back taxes. When the Applicant closed the business, the job market was not good. He found work as a security guard. He has thought about filing bankruptcy to resolve his indebtedness, but was hesitant about it.

He wanted to pay his debts, but has not had the money to do so. He contacted his creditors and explained his situation to them, but they wanted to be paid. His plan is to take care of the IRS first and then address his other creditors. The debts listed below and in the SOR were incurred as a result of his business.

1(a). The Applicant is indebted to a creditor in the amount of \$2,529.00 as of March 23, 2009. The debt remains outstanding.

1(b). The Applicant is indebted to a creditor in the amount of \$847.00 as of March 23, 2009. The debt remains outstanding.

1(c). The Applicant is indebted to a creditor in the amount of \$609.00 as of March 23, 2009. The debt remains outstanding.

1(d). The Applicant is indebted to a creditor in the amount of \$1,378.00 as of March 23, 2009. The debt remains outstanding.

1(e). The Applicant is indebted to a creditor in the amount of \$826.00 as of March 23, 2009. The debt remains outstanding.

1(f). The Applicant is indebted to a creditor in the amount of \$7,758.00 as of March 23, 2009. The debt remains outstanding.

1(g). The Applicant is indebted to a creditor in the amount of \$1,068.00 as of March 23, 2009. The debt remains outstanding.

1(h). The Applicant is indebted to a creditor in the amount of \$1,395.00 as of March 23, 2009. The debt remains outstanding.

1(i). The Applicant is indebted to a creditor in the amount of \$1,623.00 as of March 23, 2009. The debt remains outstanding.

1(j). The Applicant is indebted to a creditor in the amount of \$219.00 as of March 23, 2009. The debt remains outstanding.

1(k). In January 2004, a judgment was entered against the Applicant in the amount of \$1,787.00 and remains outstanding.

1(l). In June 2006, a tax lien was issued against the Applicant in the amount of \$22,590.00. The Applicant attempted to make a payment to the IRS concerning this debt. (Applicant's Exhibit A).

1(m). In August 2004, a judgment was entered against the Applicant in the amount of \$11,781.00 and remains outstanding.

1(n). In August 2004, a judgment was entered against the Applicant in the amount of \$12,333.00 and remains outstanding.

1(o). In March 1996, a judgment was entered against the Applicant in the amount of \$22,460.00 and remains outstanding.

1(p). The Applicant is indebted in the amount of \$1,173.00 as of March 23, 2009. The debt remains outstanding.

1(q). The Applicant is indebted to a creditor in the amount of \$932.00 as of March 23, 2009. The debt remains outstanding.

1(r). The Applicant is indebted to a creditor in the amount of \$1,308.00 as of March 23, 2009. The debt remains outstanding.

1(s). The Applicant is indebted to a creditor in the amount of \$114.00 as of March 23, 2009. The debt remains outstanding.

Applicant's Post-Hearing Exhibit A indicates that he has hired a consumer credit counselor and is preparing the schedules to file for Chapter 7 bankruptcy. He plans to include each of the debts listed in the SOR that can be discharged. To reduce expenses, the Applicant's wife has moved out of town to take care of her ailing parents. Her father recently passed away. The Applicant moved into his elderly father's house and is paying him rent. Applicant is staying current with his regular monthly expenses. He credibly states that he would never do anything to jeopardize the national security, or to injure his company or his position with the defense contractor.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

The Applicant denies both of the allegations set forth under this guideline. (See Applicant's Response to the SOR dated June 11, 2009). The Applicant completed a Questionnaire for National Security Positions dated October 11, 2007. (Government Exhibit 1). Section 27(c) asked him if he had a lien placed against his property for failing to pay taxes or other debts. Section 27(d) asked him if in the last seven years has he had any judgment against him that has not been paid. The Applicant responded, "NO" to both questions. (Government Exhibit 1). These were incorrect answers. The Applicant failed to disclose that he had judgments filed entered against him in June 2008, and a state tax lien filed against him in June 2006.

Question 28(a) of the same questionnaire asked the Applicant if in the last seven years he has been over 180 days delinquent on any debts. Applicant failed to disclose the debts set forth in the SOR under Guideline F.

The Applicant stated that when he completed the security clearance application, he did not have a copy of his credit report. (Tr. pp. 59 - 60). He knew that he had business related credit card debt, but he did not have a lien that he knew about. He was unaware of the specifics and/or had forgotten about them at the time he answered the questions. (See Applicant's Response to the SOR). He did not deliberately fail to disclose his indebtedness to the Government or his employer on the application. He believed at the time that he was honest and forthright in answering the questions.

A letter of recommendation from the Applicant's immediate supervisor indicates that the Applicant is dependable, trustworthy and hardworking. He is considered to be a valuable asset to the organization and is highly recommended for a position of trust. (Applicant's Exhibit B).

Applicant has received an award for outstanding performance on the job from the defense contractor. (Applicant's Exhibit C).

Applicant testified that from 1974 to 1981, he worked for the FBI. He started as a clerical employee, ended up as a supervisor, and left on good terms. (Tr. pp. 24 and 28).

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:

None.

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:

None.

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 and dishonesty 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 his control contributed to his financial difficulties. After twenty-five years in a successful business, the Applicant was forced to close his doors due to our poor economy. When business slowed, real estate costs increased, small business loans were not available, and he incurred debts he could not afford to pay. Although he has obtained employment since then, he has not been able to afford to pay his delinquent debt. Recently, the Applicant has hired a credit counselling company to assist him in resolving his indebtedness. He is currently working on completing the schedules to file bankruptcy under Chapter 7, which should

relieve him of his debts. As soon as he is delinquent debt free and demonstrates a pattern of financial responsibility he will be eligible to apply for access to classified information. At the present time, however, the numerous debts listed in the SOR remain owing.

Upon review of his financial report, it appears that he has little in disposable income at the end of the month to pay his delinquent bills. 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* are applicable. None of the mitigating conditions apply. His financial problems remain current, they are not isolated, and the Applicant has not initiated a prompt, good faith effort to repay his overdue creditors or otherwise resolve his debts.

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. The Applicant has recently begun the process of financial rehabilitation. Assuming he follows through with his bankruptcy and continues to demonstrate financial responsibility, he may be eligible for access to classified information in the future, but not at this time.

The evidence further shows that the Applicant did not deliberately fail to disclose his judgments and his tax liens on his security clearance application. Based upon his honesty, integrity and candid demeanor at the hearing, it was an obvious mistake on his part, not done intentionally or to conceal anything from his employer or the Government. Accordingly, I find for the Applicant under Guideline E.

In total, the Applicant has not demonstrated that he is sufficiently trustworthy to meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline F (Financial Considerations). I find for the Applicant under Guideline E (Personal Conduct).

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. Paragraph 2 is found for the Applicant.

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.
- Subpara. 1.k.: Against the Applicant.
- Subpara. 1.l.: Against the Applicant.
- Subpara. 1.m.: Against the Applicant.
- Subpara. 1.n.: Against the Applicant.
- Subpara. 1.o.: Against the Applicant.
- Subpara. 1.p.: Against the Applicant.
- Subpara. 1.q.: Against the Applicant.
- Subpara. 1.r.: Against the Applicant.
- Subpara. 1.s.: Against the Applicant.

Paragraph 2: For the Applicant.

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