



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-02269
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

March 31, 2010

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Sensitive Positions (SF-86) on October 28, 2008. (Government Exhibit 1). On July 22, 2009, 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 on August 11, 2009, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on September 2, 2009. A notice of hearing was issued on September 15, 2009, and the hearing was scheduled for November 18, 2009. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6. The Applicant presented one exhibit, referred to as Applicant's Exhibit A and testified on his own behalf. The record remained open until close of business on November 28, 2009, to allow the Applicant the opportunity to submit additional documentation. The

Applicant submitted one Post-Hearing Exhibit, consisting of nine enclosures, which was 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 Applicant is 51 years old, and has three or four years of college, but no degree. He was previously employed with a defense contractor as an Advance Technician for Network Control, and if he obtains a security clearance he will be rehired. He 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 Applicant is currently laid off, pending his security clearance eligibility. He and his wife of twenty-four and a half years have two adult children and are presently in the process of divorce. The divorce started in May of last year, but has been delayed due to home appraisal reports that would reduce the amount of the settlement owed the Applicant. Based upon the most recent adjustment, the Applicant expects to receive approximately \$94,000 as his part of the divorce settlement from the sale of the house proceeds. With the divorce proceeds, Applicant will pay off any outstanding debt he has at the time. (Applicant's Post-Hearing Exhibit, enclosure 1). Applicant also has a net balance of \$75,000 in his 401(k). Applicant is currently supported solely by unemployment benefits.

To get a fresh start, and because of the great confidence his employer had in his capabilities, the Applicant was relocated out of state by his employer to work. He was gainfully employed for nine months before he was terminated in August 2009, for not having a security clearance. Applicant's company plans to rehire him if he obtains a clearance.

Credit Reports of the Applicant dated November 19, 2008; June 25, 2009; and November 14, 2009; reflect six outstanding debts listed in the SOR. (Government Exhibits 4, 5 and 6). The Applicant denies all but one of the outstanding debts listed in the SOR. For the most part, he has not been able to confirm that they belong to him. If they do, he will pay them. Applicant testified that if the debts are his, they are business debts from a flower shop he invested in for his parents to operate. His brother took over the business in 2000, when the Applicant started working for his current employer.

1(a). Applicant verified that a judgment, which was entered against him in the amount of \$10,867.00, has been paid. (Applicant's Exhibit A, and Tr. pp. 26 - 27). Furthermore, Applicant researched the debt by obtaining a copy of his superior court summary through the civil case number listed on the Government's credit report and found there was no match for the case number. This indicates that the debt has been paid.

1(b). A lien against the Applicant for \$89.00 remains outstanding, but the Applicant has no recollection of the debt. Applicant researched the debt by obtaining a copy of his superior court summary through the civil case number listed on the Government's credit report and found there was no match for the case number. (Applicant's Exhibit A). This indicates that the debt may have been paid.

1(c). Applicant admits that a debt owed to a bank for a delinquent credit card in the amount of \$18,722.00 remains outstanding. He plans to pay this debt off with the proceeds from his divorce. (Tr. p. 30).

1(d). A debt owed to a bank in the amount of \$2,701.00 remains outstanding. Applicant has no recollection of the debt and is currently disputing it. (Tr. p. 33).

1(d). A tax lien placed against the Applicant in May 2001, in the amount of \$59.00, remains outstanding. Applicant researched the debt by obtaining a copy of his superior court summary through the civil case number listed on the Government's credit report and found no match for the case number. (Applicant's Exhibit A). (Although tax liens are not recorded in civil court records, Applicant made a good faith effort to resolve the debt). Despite this, he plans to pay the debt when he starts working.

1(e). A tax lien placed against the Applicant in July 2000, in the amount of \$58.00 remains outstanding. Applicant researched the debt by obtaining a copy of his superior court summary through the civil case number listed on the Government's credit report and found no match found for the case number. (Applicant's Exhibit A). (Although tax liens are not recorded in civil court records, Applicant made a good faith effort to resolve the debt). Despite this, he plans to pay the debt when he starts working.

Prior to his divorce and job lay-off, the Applicant had a favorable credit history. He plans to pay all of his past, present and future debts once he returns to work. Since moving alone out of state, thus leaving his family, the Applicant has done some serious downsizing and made drastic financial adjustments. He went from living on a dual income to a single one, and from a large home to a small apartment, sharing a room. He is living on unemployment, volunteering at a shelter, and teaching while looking for employment.

Letters of recommendation from family members, friends and professional associates of the Applicant attest to his honesty, reliability, high degree of integrity, loyalty and trustworthiness. He is said to have impeccable managerial skills, excellent

communication skills, and great team leadership skills. He is described as confident, competitive, morally and ethically sound, and a valuable member of any organization. (Applicant's Post-Hearing Exhibit, enclosures 2, 3, 4, 5, 6, 7, 8 and 9).

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.(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 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 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 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."

CONCLUSION

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 or her 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, namely, his divorce, relocation, and loss of employment, caused his financial difficulties. Applicant did not incur the delinquent debts by overspending or living lavishly. Although the Applicant is still unemployed, he has done as much as is humanly possible to inquire into and resolve his financial problems. He has researched the debts by either contacting the creditor and/or disputing the debt, and has informed them of his situation. Furthermore, he plans to pay off any debt that is determined to be his once he gains employment.

Under the particular circumstance of this case, the Applicant has made a good faith effort to resolve his past due indebtedness. One of the debts has been paid off in full. If any of the five other debts are proved to be his, he will pay them once he is employed. Three of the five debts are relatively small debts that he will resolve immediately. The other two debts will be paid off with his divorce settlement. He understands the responsibilities that come with holding a security clearance and 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. The Applicant has demonstrated that he can properly handle his financial affairs and that he is fiscally responsible. 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 (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.(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).

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.

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

