



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-03237
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

June 21, 2010

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on September 22, 2008. (Government 1.) On November 2, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines E, H and J for Applicant. The action was taken under Executive Order 10865, "Safeguarding Classified Information Within Industry" (February 20, 1960), as amended; Department of Defense Directive 5220.6, "Defense Industrial Personnel Security Clearance Review Program" (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense (DoD) for SORs issued after September 1, 2006.

The Applicant responded to the SOR on December 5, 2009, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 19, 2010. A notice of hearing was issued on January 22, 2010, scheduling the hearing for March 11, 2010. The Government presented eight exhibits, referred to Government Exhibits 1 to 8, which were admitted without objection. The

Applicant presented eight exhibits, referred to as Applicant's Exhibits A through H, which were admitted without objection. The Applicant called two witnesses and testified on his own behalf. The record remained open until March 25, 2010, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted four Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits 1 through 4, which were admitted without objection. The official transcript (Tr.) was received on March 24, 2010. 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 51 years old, and has a high school diploma. He is employed by a defense contractor as a Precision Machinist 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 the delinquent debts set forth in the SOR under this guideline that total in excess of \$26,000.00. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated October 2, 2008, January 13, 2009, April 20, 2009, October 5, 2009, and January 12, 2010, collectively reflected each of the delinquent debts set forth in the SOR. (Government Exhibits 4, 5, 6, 7 and 8.) Applicant attributes his financial difficulties to his move, and the fact that his credit protection insurance did not pay his debts when they should have.

The Applicant testified that he and his wife have six children of their own. Due to problems with their daughter, they decided to adopt their four grandchildren. In order to do this, the Department of Children Services required them to get a larger house. In 2006, they put their house up for sale, and rented for six months until their new house was built. During this transition, they fell behind on their bills. The Applicant contends that his credit protection insurance that was an expensive investment for him, should have paid his debts and kept him current during this period. He states that initially the credit protection insurance started paying his bills and then they stopped paying for some unknown reason. Applicant provided a copy of letters he received verifying his credit protection insurance and the accounts it covered. (Applicant's Exhibit A.)

The Applicant was hurt on the job and receiving disability payments from October 30, 2003 through October 5, 2004. He was ultimately terminated due to his physical limitations and his employers unwillingness to alter his job responsibilities. Applicant testified that as a result of five separate knee surgeries and related complications that eventually resulted in a total knee replacement in 2007, he was out of work from about from 2003 through 2007, about four years. (Tr. p. 46-47.)

The Applicant currently has access to approximately \$119,000.00 in his bank accounts, broken down by \$51,000.00 in a money market savings account, \$50,000.00 as a first offer settlement from his knee injury, \$15,000.00 in a 401K or Roth IRA and \$2,600.00 from his income tax return. (Applicant's Post-Hearing Exhibit 2.) Applicant admits that he could afford to pay the remaining delinquent debt set forth in the SOR, but as a matter of principle wants to force the credit protection company to pay them because they are legally responsible to do so.

Each of the delinquent debts set forth in the SOR have been addressed by the Applicant. He has either paid the debt in full or is disputing the debt with the credit protection company. A delinquent debt owed to a creditor in the amount of \$242.00 was paid on November 16, 2009. (Applicant's Exhibit B and Tr. p. 53.) A delinquent debt owed to a creditor in the amount of \$2,895.00 has been paid. (Applicant's Exhibit D.) A delinquent debt owed to a creditor in the amount of \$236.00 was paid on April 13, 2009. (Applicant's Exhibit E.) A delinquent debt owed to a creditor in the amount of \$90.00 was paid on November 16, 2009. (Applicant's Exhibit C.) A delinquent debt owed to a creditor in the amount of \$294.00 was paid on November 13, 2009. (Applicant's Exhibit F.)

Three debts in the SOR are currently in dispute. Allegation 1(h), a delinquent debt owed to a creditor in the amount of \$3,116.00 remains owing, but Applicant contends that it should have been paid through his credit protection insurance. (Tr. p. 85.) Applicant provided a copy of a letter verifying coverage. If at some point it is determined that he owes the debt, he is willing and able to pay it.

Allegation 1(b), a controversy exists over whether the Applicant or the credit protection agency is responsible for paying a delinquent debt owed to a creditor in the amount of \$10,104.00. A letter from the creditor indicates that the account was under credit protection and no payment was due on August 8, 2004. (Applicant's Exhibit D.) The Applicant testified that he paid about \$700.00 for credit protection insurance and that the debt should have been paid through the insurance. (Tr. p. 80.) The credit protection company paid the debt for about six months and then stopped. (Tr. p. 56.) A letter from the creditor dated November 16, 2009, indicates that they agreed to settle the claim for \$2,500.00. (Applicant's Exhibit G.) Applicant does not want to pay a debt as a matter of principle. (Tr. pp. 60, and 81, 83 - 84.)

Allegation 1(e), a delinquent debt owed to a creditor in the amount of \$10,464.00 remains owing, but Applicant contends that it should have been paid through his credit protection insurance. (Tr. p. 84.) He provided a copy of a letter verifying coverage. If

at some point it is determined that he owes the debt, he is willing and able to pay it. Government Exhibit 9, the Applicant's most recent credit report does not clearly indicate whether the debts are still owing. The Applicant is current on all of his regular monthly expenses that includes a \$4,200.00 monthly house payment.

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

The Applicant admits the delinquent debts set forth in the SOR under this guideline. The Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) dated September 22, 2008. (Government Exhibit 1.) Question 28(a) of the application asked the Applicant if in the last seven years has he been over 180 days delinquent on any debts. Question 28(b) of the application asked the Applicant if he is currently over 90 days delinquent on any debts. The Applicant answered, "NO" to both questions and failed to disclose any of the delinquent debts set forth above.

The Applicant credibly explained that at the time he completed the application, he had no knowledge of any delinquent debts. (Tr. pp. 86 - 87.) His wife has always handled the bills and he was not aware that they were delinquent to any extent. He did not intentionally conceal any information from the Government on his security clearance application.

A best friend for the Applicant's who has known him for forty years testified that he is honest, responsible and frugal. He is recommended for a position of trust. (Tr. 27-34.)

Applicant's wife testified that she has been married to the Applicant for thirty-five years. Most of the time, her husband handled the finances, except during the period when they were selling their house, getting a rental, moving and adopting the grandchildren. She was taking care of the bills and became overwhelmed. (Tr. 34-40.)

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.

Conditions that could mitigate security concerns:

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;

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

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.

Condition that could raise a security concern:

16(a) The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Conditions that could mitigate security concerns:

None.

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 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 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), and untruthful on his security clearance application (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 her security clearance eligibility.

The Applicant has addressed all of his delinquent debts. He has paid off all but three of the debts. He is disputing those three, as he believes that they should have been paid by his credit protection insurance. He has provided documentation showing that he had credit protection insurance on those accounts. The question remains whether the credit protection insurance was responsible under the contract to pay all of his indebtedness or just part of it. If it is determined that he owes the debts, he will pay them. He has sufficient monies available, is current with all of his other monthly expenses and demonstrates financial rehabilitation. He has presented sufficient evidence to demonstrate a track record of financial responsibility.

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. However, Mitigating Conditions 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* and, 20(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* also apply. The Applicant has indeed made a good faith effort to repay her overdue creditors or otherwise resolve her debts. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

With respect to Guideline E (Personal Conduct), the Applicant was not aware of his delinquent debts when he completed the application and did not deliberately conceal material information from the Government on his security clearance application concerning his history of financial indebtedness. Accordingly, I find for the Applicant under this guideline.

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 good judgement, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, and other characteristics indicating that the person may properly safeguard classified information.

On balance, it is concluded that the Applicant 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 and 2 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.

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 clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge