



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



In the matter of:)
)
-----) ISCR Case No. 09-03760
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: Barry W. Rorex, Esquire

August 16, 2010

Remand Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On February 24, 2009, Applicant applied for a security clearance and submitted an Electronic Questionnaires for Investigations Processing version of a Security Clearance Application (e-QIP).¹ On June 8, 2009, the Defense Office of Hearings and Appeals (DOHA) furnished him a set of interrogatories pertaining to his financial situation. He responded to the interrogatories on July 15, 2009.² On November 3, 2009, DOHA issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and

¹ Government Exhibit 1 (e-QIP), dated February 24, 2009.

² Government Exhibit 2 (Applicant's Answers to Interrogatories, dated July 15, 2009).

modified (Directive); and *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the Department of Defense on September 1, 2006) (hereinafter AG) for all adjudications and other determinations made under the Directive. The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on November 9, 2009. In a sworn, written statement, notarized on November 24, 2009, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on December 31, 2009, and the case was assigned to Administrative Judge Edward W. Loughran on January 12, 2010. It was reassigned to me on February 12, 2010, due to caseload considerations. A Notice of Hearing was issued on March 12, 2010, and I convened the hearing, as scheduled, on March 30, 2010.

During the hearing, seven Government exhibits were admitted into evidence, without objection. Although Applicant did not submit any exhibits, it was noted that he had attached a number of documents to his Answer to the SOR, and those documents were considered, though not given specific exhibit designations. Applicant testified. The record remained open to afford Applicant the opportunity to supplement it, and on April 12, 2010, he submitted three additional exhibits that were also admitted into evidence, without objection. The transcript (Tr.) was received on April 7, 2010.

On May 18, 2010, after having considered all of the evidence, I issued a decision in the case. The decision was that it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Accordingly, his eligibility for access to classified information was denied. Applicant subsequently appealed that decision.

On July 16, 2010, the DOHA Appeal Board issued a decision, remanding the case for the following reason:

As a preliminary issue, we note that the record does not contain Government Exhibits 1-7, the documents submitted by Department Counsel and admitted at the hearing. Tr. at 13. Without a complete record we cannot perform appellate review. Accordingly, we remand the case to the Judge for the purpose of reconstructing the record in consultation with the parties. Upon completion of that task, the case file should be returned to the Board for processing of Applicant's appeal in accordance with the Directive.

At the time the original decision was submitted to my administrative staff for issuance, Government Exhibits 1-7 were in the case file. Between the times the decision was issued and the case file was transferred to the Appeal Board, those

exhibits disappeared from the case file. Despite extensive efforts to locate those exhibits, they were not located. Copies of Government Exhibits 1-7 were previously furnished Applicant's Counsel as well as retained by Department Counsel. In light of such circumstances, I ordered both Counsel to prepare another compilation of those exhibits, and directed Department Counsel to furnish me with that approved compilation by the close of business on August 10, 2010. On July 27, 2010, Department Counsel furnished me with new copies of the missing exhibits, with copies also sent to Counsel for Applicant. There being no objection interposed, the documents are once again accepted into evidence as identical substitutes for the original Government Exhibits 1 through 7.

Findings of Fact

The Findings of Fact set forth in my initial decision, dated May 18, 2010, are hereby incorporated herein as though they were expressly rewritten below.

Policies

The Policies set forth in my initial decision, dated May 18, 2010, are hereby incorporated herein as though they were expressly rewritten below.

Analysis

The Analysis, including the Whole-Person Concept Analysis, set forth in my initial decision, dated May 18, 2010, are hereby incorporated herein as though they were expressly rewritten below.

Formal Findings

The Formal Findings set forth in my initial decision, dated May 18, 2010, are hereby incorporated herein as though they were expressly rewritten below.

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ROBERT ROBINSON GALES
Administrative Judge