



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



In the matter of:)
)
-----) ISCR Case No. 09-03790
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Robert E. Coacher, Department Counsel
For Applicant: *Pro Se*

March 31, 2010

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on January 7, 2009. (Government Exhibit 4). On September 18, 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 in writing on October 14, 2009, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on November 4, 2009. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on November 9, 2009, and he submitted no reply within the 30 days allowed. The case was assigned to the undersigned for resolution on January 11, 2010. Applicant submitted a late response to the FORM dated January 19, 2010, consisting of

six enclosures that was admitted into evidence with no objection. Based upon a review of the case file, pleadings and exhibits, eligibility for access to classified information is granted.

FINDINGS OF FACT

The Applicant is 32 years old, and has a Bachelor's of Science in Business Administration. He is employed as a Manager with a defense contractor. 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.

Applicant admits the two different delinquent debts set forth in the SOR. Credit Reports of the Applicant dated June 18, 2009; September 11, 2009; and January 24, 2009; reflect these two outstanding debts totaling approximately \$23,000. (Government Exhibits 6, 7 and 8).

In 2007, the Applicant experienced a five month period of unemployment that caused his financial difficulties. During that period, he used credit cards to pay his living expenses and his mortgage. When he started working a new job, his income was not enough to pay down his credit card debt and make his house payments at the same time. Applicant decided that he would try to get the house refinanced or obtain a loan modification to reduce his expenses. His efforts were unsuccessful. The Applicant hired a company to represent him in a loan modification program to get his house payments reduced. The company turned out to be a fraud, and he lost his money. (Government Exhibit 3).

In a desperate effort to resolve his indebtedness, the Applicant decided to sell his house. On July 4, 2008, the Applicant entered into a short-sale real estate contract to sell the property. In order for the banks to consider a lien release on the house since it fell in value, the Applicant had to begin to miss payments. Applicant started missing house payments and the following debts became delinquent. Applicant incurred a delinquent debt to a creditor for an account that was 120 days or more past due in the amount of \$4,000.00. (Allegation 1(a) of the SOR). As of the date of the SOR it remained unpaid. Applicant also incurred a delinquent debt to a creditor for an account that is 120 days or more past due in the amount of \$19,000.00. (Allegation 1(b)). As of the date of the SOR it remained unpaid. (Government Exhibit 3).

On September 6, 2008, the Applicant received an offer to purchase the property. Applicant submitted a copy of the letter of short sale approval from the creditor who is the first lien holder on the loan (allegation 1(a)), and that has the primary balance of the mortgage. Applicant also submitted a letter of short sale approval from the creditor who is the second lien holder (allegation 1(b)). Applicant's Response to the FORM indicates that the two creditors in question, (both lenders on the Applicant's house) agreed to the terms of the short-sale which was scheduled to close escrow on January 29, 2010. (Applicant's Response to the FORM, enclosures 1 through 6). At that point, Applicant will have satisfied each of the two delinquent debts set forth in the SOR. All of Applicant's other debts are current and being paid in a timely manner.

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;
- 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, a period of unemployment in 2007, caused his financial difficulties. To reduce his expenses and pay off his delinquent debts, in 2008, the Applicant put his house up for sale. He now has a bonafide purchaser and the lenders have approved the sale. Applicant was scheduled to close escrow on January 29, 2010, after the record closed. Given the current economic situation, he has done as much as is humanly possible to resolve his financial problems.

Under the particular circumstance of this case, the Applicant has made a good faith effort to resolve his past due indebtedness, once he was employed. The Applicant 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 clearly mitigates the negative effects of the Applicant’s 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.

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

