



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-04177
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Department Counsel
For Applicant: *Pro se*

July 12, 2010

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) dated December 12, 2008. (Government Exhibit 1.) On December 2, 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 December 26, 2009, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on March 1, 2010. A notice of hearing was issued on March 1, 2010, scheduling the hearing for April 16, 2010. The Government presented six exhibits, referred to Government Exhibits 1 to 6, which were admitted without objection. The Applicant presented three exhibits, referred to as Applicant's Exhibits A

through C, which were admitted without objection. The Applicant also testified on his own behalf. The record remained open until the close of business on May 3, 2010, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted thirteen Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A through M, which were admitted without objection. The official transcript (Tr.) was received on April 28, 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 45 years old, and has completed three years of college. He is about eighteen units short of a Bachelor's of Science Degree in Information Technology. He is employed by a defense contractor as a Manager of Engineering and Integration Branch 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 denied allegations 1(a), 1(b), 1(d), 1(e), 1(f), 1(g), and 1(h) set forth in the SOR. He admitted allegations 1(c), and 1(i) set forth in the SOR. He admitted that at one time he was indebted to each of the creditors listed in the SOR, but since then has resolved each of the debts that he denies in response to the SOR. Those debts he admits, he is still making payments toward. The delinquent debts set forth in the SOR under this guideline totaled in excess of \$50,000. Credit Reports of the Applicant dated December 18, 2008; October 23, 2009; February 16, 2010; and April 13, 2010, collectively reflect each of the delinquent debts set forth in the SOR. (Government Exhibits 3, 4, 5, and 6.)

The Applicant served honorably in the United States Navy for eleven years from September 1985 to April 1996. (Applicant's Post-Hearing Exhibit I.) He was married in 1983, and divorced in 1985. There are no children from the marriage. At some point, he moved in with a female roommate with children to save money. The rent was only \$250.00 monthly, but his roommate had anger issues that were difficult to deal with. She frequently yelled at her children and at the Applicant. In November 1999, he began working for his current employer.

He attributes his delinquent debts to poor organization and stress due to illnesses in his family. In the summer of 2008, his father was diagnosed with wide spread cancer, his two uncles were also diagnosed with cancer, bone and pancreatic cancer respectively. His mother has Multiple Sclerosis. He states that he was emotionally stressed and worried about them, and was not in the right mind to take care of his financial affairs. Since then, the Applicant has moved out into his own apartment, budgets his money accordingly, realizes what he can comfortably afford, and lives within his means. He is also in the process of adopting two children of his own. He will receive financial assistance for the children's expenses on a monthly basis from the state.

The Applicant also explained that for a while, he and a business partner had a web page computer repair business on the side. His partner started investing in the stock market and losing money. His partner was forced to use his credit cards to purchase business supplies and to pay the bills in order to keep the business going. The Applicant decided it best to dissolve the business. After some disagreement over business debt responsibilities, which ultimately required going to court to settle, the business debt was divided and the Applicant was stuck with the legal fees and a judgment that had been entered against the business.

The Applicant has been working diligently to resolve each of the delinquent debts set forth in the SOR. He provided documentation to show what he has done. A delinquent debt owed to a creditor for a judgment filed against him in September 2004, in the amount of \$27,430, was paid in April 2007. A copy of the acknowledgment of satisfaction of judgment was submitted. (Applicant's Post-Hearing Exhibit A, and Tr. pp. 25-28.) A delinquent debt owed to a creditor in the amount of \$224.00 was paid in 2008 or early 2009. (Applicant's Post-Hearing Exhibit B, and Tr. pp. 31-32 and 36.)

The Applicant testified that a delinquent debt owed to a creditor in the amount of \$2,352.00 will be paid off in about two and a half months. Although the creditor has agreed to a payment arrangement of \$392.00 monthly for six months, the Applicant plans to immediately start making payments, and increase the payment by \$545.00 each month, once his car is paid off, in order to resolve the debt sooner. (Tr. p. 33 and Applicant's Exhibit C.)

The Applicant is also making regular monthly payments agreed to by the creditor for delinquent student loans in the amounts of \$4,637.00; \$3,710.00; and \$2,240.00. His payments are approximately \$906.00 monthly. He has been consistently making these payments since July 2009. (Applicant's Post-Hearing Exhibits D, E and F, Applicant's Exhibit B, and Tr. p. 38.) A delinquent debt to a creditor for a dental bill in the amount of \$373.00 has been paid. A letter from the creditor verifies that payment in full was made on February 24, 2009. (Applicant's Post-Hearing Exhibit G, and Tr. p. 50.) A delinquent debt owed to a creditor in the amount of \$178.00 has been paid. A letter from the creditor verifies that payment in full was made on April 22, 2010. (Applicant's Post-Hearing Exhibit H, and Tr. p. 49.) A delinquent debt to a creditor for a repossessed vehicle in the amount of \$13,929.00 has been resolved. The Applicant

testified that he made payments toward the delinquent debt in the amount of \$500.00 month for three months before learning that the debt had been removed from his most recent credit report dated April 13, 2010. (Government Exhibit 6.) The credit report reflects a zero balance owed to this creditor. The Applicant assumes the vehicle was sold and there is no deficiency. (Tr. p. 51.)

The Applicant's current financial report indicates that he is capable of meeting all of his financial obligations. He has sufficient income available to continue paying off his delinquent debts, and plans to do so in the most expedient manner. (Applicant's Exhibit A.) He understands his responsibilities to live within his means and pay his bills in a timely fashion.

Letters of recommendation from the Applicant's site manager, a program manager, and a coworker, attest to his intelligence, dedication, extensive knowledge and technical skill. He is considered to be an exceptional employee who is competent, professional and heavily relied upon by the company. He is favorably described as follows, "As Chief of the Engineering and Integration Branch, [the Applicant] leads a multi-disciplined, highly diverse team of IT specialists, data base administrators, and software engineers," split between two states. His personality and leadership skills enable him to be extremely successful in this very challenging role. (Applicant's Exhibit C.)

The Applicant has recently been approved by the Department of Public Social Services for adoption of children between the ages of five and eight. (Applicant's Post-Hearing Exhibit J.)

The Applicant received a certificate of appreciation from the Southeast Region of US Customs and Border Protection for his specialized work for the agency. (Applicant's Post-Hearing Exhibit K.)

A letter from the Presiding Chaplain of the Universal Life Church Monastery indicates that the Applicant is a reverend in good standing with the church and has the authority to perform the sacrament of marriage. (Applicant's Post-Hearing Exhibit M.)

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.

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, 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.

Each of the delinquent debts set forth in the SOR have been or are in the process of being resolved. For the most part, circumstances beyond the Applicant’s control caused his financial difficulties. Clearly the serious health issues facing the Applicant’s family, and his business break up, were detrimental to his finances. The

expenses associated with his move and being poorly organized further led him to lose focus on his finances. However, he has now refocused and addressed these issues. He has either set up payment plans with his creditors that he is following, or he has paid off the debt in full. He is living within his means and currently demonstrates financial rehabilitation. He has presented sufficient evidence to demonstrate a track record of financial responsibility and has resolved or is in the process of resolving his financial indebtedness.

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 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 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 his overdue creditors or otherwise resolve his debts. 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 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, or other characteristics indicating that the person may properly 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 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.
Subpara. 1.i.: 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