



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



In the matter of:)	
-----)	
SSN: -----)	ISCR Case No. 09-04618
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Department Counsel
For Applicant: Stephanie N. Mendez, Attorney At Law

October 6, 2010

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) dated January 16, 2009. (Government Exhibit 1.) On December 17, 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 February 1, 2010, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on March 23, 2010. A notice of hearing was issued on April 2, 2010, and the hearing was scheduled for May 11, 2010. At that hearing the Government presented nine exhibits referred to as Government Exhibits 1 through 9, which were admitted into evidence without objection. The Applicant presented

seventeen exhibits, referred to as Applicant's Exhibits A through Q, which were admitted without objection. The Applicant also testified on his own behalf. The record remained open until close of business on June 11, 2010, to allow the Applicant to submit additional documentation. The Applicant submitted fifteen Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits R through DD. The official transcript (Tr.) was received on May 18, 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 55 years old and married. He is employed by a defense contractor as a Technical Writer 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 allegations 1(b), 1(c), 1(d), 1(e), 1(f), 1(i), 1(j), 1(k), 1(l), 1(o) of the Statement of Reasons. He denies allegations 1(a), 1(g), 1(h), 1(m), and 1(n). The allegations he denies, he is either disputing or has no knowledge of. The delinquent debts set forth in the SOR under this guideline total in excess of \$80,000. Credit Reports of the Applicant dated January 27, 2009; June 19, 2009; November 5, 2009; March 4, 2010; and May 6, 2010, collectively reflect each of the delinquent debts set forth in the SOR. (Government Exhibits 2, 5, 6, 7 and 9.)

The Applicant joined the United States Marine Corps in 1975 and served honorably until 1979. He then went to work for the defense industry where he has held a security clearance for the past thirty years. He has had a successful career and no security violations.

In November 1994, as the result of a divorce, the Applicant filed for bankruptcy and his debts were discharged in January 1995. In 1995, he remarried, re-established his credit, paid his bills on time and maintained financial responsibility. He purchased a home and two rental properties, in early 2000, in hopes of later cashing in on the real estate boom. Since then and up until 2007, the Applicant was fiscally responsible. A series of unexpected events outside of his control occurred that caused his more recent

financial problems. In 2007, with the downturn in the economy that adversely effected the real estate market, he was subject to a job lay-off. In order to avoid a job lay-off, he took a job offered by his employer located out of state. The Applicant was unable to sell his house due to the sluggish real estate market. To take the job, the Applicant relocated alone, without his wife and children for a one year period. During this year, 2007-2008, he maintained two households. Applicant paid for a room in state A and the living expenses associated with it, and also maintained a mortgage, and paid living expenses to support his wife and children in state B. The Applicant was also maintaining the two rental properties that were single family dwellings in state B and were rented to tenants. (Tr. p. 34.) While he relocated, his tenants became delinquent on the rent. This forced him to file eviction proceedings and pay the costs associated with that. (Tr. p. 35.) Applicant's wife was charged with Driving Under the Influence of Alcohol, and Applicant had to pay fines and expenses associated with it. The downturn in the economy caused the value of his house and the rental properties to drop significantly, and he was unable to sell them. As a result of the foregoing, the Applicant became dependent on credit cards to maintain the monthly expenses.

In December 2008, the Applicant returned to state B, rejoining his family. He sought help through mortgage loan modification programs and a credit card debt consolidation program. His loans on his rental properties have been modified. (Tr. pp. 42 and 46.) He is making forbearance payments on his primary mortgage and is waiting for a decision from the bank on the modification. (Tr. p. 44.) In August 2009, he made several payments toward a debt consolidation program and then stopped. He stated that he became displeased with the services, as they did not work as he had intended. (Tr. pp. 38-39).

The Applicant was indebted to the following creditors for delinquent mortgages and credit cards. Since the date of the hearing, the Applicant has borrowed from his 401k that had approximately \$120,000 in it, and has used the money to pay off each of the debts set forth in the SOR. (See Applicant's Exhibit DD). A debt to a creditor in the amount of \$133.00 has been paid. (Applicant's Exhibit R.) A debt to a creditor in the amount of \$7,210.00 has been paid. (Applicant's Exhibit S.) A debt to a creditor in the amount of \$12,202.00 has been paid. (Applicant's Exhibit T.) A debt to a creditor in the amount of \$1,421.00 has been paid. (Applicant's Exhibit U.) A debt to a creditor in the amount of \$1,224.00 has been paid. (Applicant's Exhibit V.) A debt to a creditor in the amount of \$13,480.00 has been paid. (Applicant's Exhibits K and W) A debt to a creditor in the amount of \$3,175.00 has been paid (Applicant's Exhibit Z). A debt to a creditor in the amount of \$115.00 has been paid. (Applicant's Exhibit AA). A debt to a creditor in the amount of \$9,275.00 with a balance of \$222,000.00 has been resolved. (Applicant's Exhibit D). A debt to a creditor in the amount of \$28,325.00 with a balance \$302,000.00 has been resolved. (Applicant's Exhibits E and BB). A debt to a creditor in the amount of \$2,241.00 has been resolved. (Applicant's Exhibit F and CC). Applicant contends that the debt owed to a creditor in the amount of \$439.00, is the same debt owed to a creditor in the amount of \$58.00. (Tr. pp. 48-49 and 68). The Applicant initially disputed the debt, but later decided to pay it.

The Applicant's personal financial statement dated August 26, 2009, indicated that after paying his monthly expenses he had a negative monthly remainder. (Government Exhibit 3.) His monthly income has increased since then. Starting July 1, 2010, the Applicant receives an additional \$860.89 each month in retirement income that supplements his salary. He now has sufficient monies to cover his monthly expenses and has a comfortable reserve. (Applicant's Exhibit DD).

Letters of recommendation from professional and personal associates, including coworkers, friends, and a tenant, collectively consider the Applicant to be honest, polite, helpful, hardworking, loyal, considerate, responsible and ambitious. He is well-liked, respected and productive. He is said to have a high degree of integrity and quickly accomplishes all assigned duties on the job. (Applicant's Exhibits L, M, N, O and P.)

The Applicant's performance evaluation for the period from February 23, 2009, through December 31, 2009, indicates that he either "meets performance requirements", "exceeds performance requirements" or performs "outstanding" in each category. (Applicant's Exhibit I).

The Applicant also received accolades for completing a challenging schedule and a job well done at work from the Tech Data Lead on October 1, 2009. (Applicant's Exhibit J).

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 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;

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.

Circumstances largely beyond the Applicant's control, namely the downturn in the economy, the additional costs associated with his job relocation, maintaining two households, the nonpaying tenant problems, and his wife's criminal troubles created his financial hardship. Although in the past he tried to clean up his credit and pay his delinquent debts, he was unable to do so effectively, until recently. He made the decision to borrow from his 401K and used the money to pay his delinquent debts. He has been prudent and exercised good judgment in an effort to resolve his debts. He has sufficient income to pay his bills comfortably. 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 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.
Subpara. 1.j.:	For the Applicant.
Subpara. 1.k.:	For the Applicant.
Subpara. 1.l.:	For the Applicant.
Subpara. 1.m.:	For the Applicant.
Subpara. 1.n.:	For the Applicant.
Subpara. 1.o.:	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