



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-04613
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

July 26, 2010

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) dated February 6, 2008. (Government Exhibit 1.) On December 10, 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 4, 2010, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to this Administrative Judge on March 9, 2010. A notice of hearing was issued on March 30, 2010, scheduling the hearing for May 19, 2010. The Government presented eight exhibits, referred to Government Exhibits 1 to 8, which were admitted without objection. The Applicant called one witness and presented two exhibits, referred to as Applicant's

Exhibits A and B, which were admitted without objection. The Applicant also testified on his own behalf. The record remained open until June 21, 2010, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted four Post-Hearing Exhibits, consisting of twenty-one pages, referred to as Applicant's Post-Hearing Exhibits 1 through 4, which were admitted without objection. The official transcript (Tr.) was received on June 1, 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 31 years old, and a high school graduate. He is employed by a defense contractor as a Photographer/Videographer 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 each of the sixteen delinquent debts set forth in the SOR under this guideline that total over \$100,000. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated February 16, 2008; June 30, 2009; November 24, 2009; and February 25, 2010, collectively reflect each of the delinquent debts set forth in the SOR. (Government Exhibits 4, 5, 6 and 7.) Applicant attributes his financial difficulties to being young and irresponsible. He and his wife were married young, and starting their family early in life. They were very naive. They did not have sufficient income to live on, and so they used credit cards. They were consistently behind on their monthly payments to their creditors, but did not really take it seriously. The Applicant was working for his current employer from 2000 until 2004, when he was laid off, and his finances got worse. His wife started a home day care business that helped them make ends meet for a while, until her business took a downturn.

In 2007, the Applicant was rehired by his previous employer. Sometime in 2009, the Applicant hired a company, for \$3,000, to help them obtain a loan modification on their home. The company took their money and provided them no services. (Tr. p. 54.) Since then, he and his wife have been working to clean up their finances. They have learned from their mistakes, matured and realize how important it is to pay their bills on time and live within their means. They determined that based upon the extent of their

indebtedness, Bankruptcy was a better option for them. They hired an attorney and filed for Chapter 7 Bankruptcy, that will discharge their delinquent debts within the next several months. (Applicant's Exhibit B and Post-Hearing Exhibit 1.) Their mortgage has been modified and the payments are affordable based upon their income. (Applicant's Exhibit A.)

Each of the delinquent debts set forth in the SOR have been included in the Applicant's Chapter 7 bankruptcy petition, except the \$56.00 parking debt that the Applicant paid, and a cable bill for \$227.00 that he paid. (Tr. pp. 57 - 58.)

The Applicant's wife testified that she has always handled all of the finances in the household and will continue to do so. (Tr. p. 28 .) She testified that she had not disclosed the extent of their indebtedness to her husband because she did not want to trouble him, and thought she could handle it. (Tr. p. 50.) She states, "I don't think we, either one of us, really realized how much we were getting in the hole..." (Tr. p. 29.) They both understands how important it is to live within their means, and to pay their bills on time. They believe they now have a handle on their finances and will never again be prone to making poor financial decisions. (Tr. p. 52.)

Applicant's personal financial statement dated June 10, 2010, indicates that after his monthly expenses, he has \$544.00 left at the end of the month. Applicant brings home between \$1,800 and \$2,000 every two weeks. They also receive approximately \$446.00 monthly to help cover expenses for their daughter they plan to adopt. Their house payments are \$1,900 monthly and well within their means. After paying their utilities, food, car, clothing and pre-school expenses, they still have sufficient monies to live on. (Applicant's Post-Hearing Exhibit 2.)

The Applicant and his wife have two biological children and one on the way. They are also in the process of adopting a young girl who has been a foster child with them since she was two months old. (Tr. pp. 45 - 46.)

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 his personal background during the security clearance process.

The Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) dated February 6, 2008. Question 28(a) of the application asked the Applicant if in the last seven years he has been over 180 days delinquent on any debts. The Applicant answered, "NO." (Government Exhibit 1.) Question 28(b) of the application asked the Applicant if he is currently over 90 days delinquent on any debts. The Applicant answered, "NO." These were false answers. The Applicant failed to list any of the debts set forth in the SOR. The evidence is clear that the Applicant was not aware of the extent of his indebtedness. His wife handled all of the household finances and he had no knowledge as to the nature of the bills or if he was delinquent on any of them. Therefore, he did not intentionally falsify his security clearance questionnaire in

response to the questions concerning his finances. In fact, he answered as honestly as he was able, with the knowledge he had at that time.

Letters of recommendation from the Applicant's supervisor, coworker and friends reflect that he is an excellent employee who is professional and trustworthy. He is a diligent worker, who consistently gives 110% to everything he does. He is truthful and a man of high integrity and character. (Applicant's Post-Hearing Exhibit 3.)

The Applicant received an Integrated Communications Excellence Award for his work performance. (Applicant's Post-Hearing Exhibit 4.)

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.

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:

None.

Condition 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 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.

With respect to his finances, most of the Applicant’s delinquent debt was caused by immaturity, irresponsibility and overspending. Some of it was obviously caused by periods of unemployment during his lay-off, and his wife’s business downturn. Since 2007, when he returned to work, however, he has been working to resolve his indebtedness. Although he was not successful at first, by hiring a company that took his money and provided no service, he continued to pursue a remedy for his financial

problems. Most recently he hired an attorney and filed Chapter 7 Bankruptcy. Other than the two creditors he paid, each of the creditors listed in the SOR are included in the Bankruptcy and expected to be discharged. The only debt that will remain after discharge is his mortgage and it has been modified so that they payments are reasonable and affordable.

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).

Under Guideline E, the Applicant did not deliberately conceal material information from the Government on his clearance application in response to questions about his history of delinquent indebtedness. He did not know about the extent of his financial problems. There is a reasonable excuse for his failure to answer the questions truthfully. He was not trying to conceal his delinquent indebtedness, he simply did not know the extent of it.

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 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.
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.
Subpara. 1.p.: For the Applicant.

Paragraph 2: For the Applicant.

Subpara. 2.a.: 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