



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 09-06223

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Barry M. Sax, Attorney At Law

August 2, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on May 1, 2009. (Government Exhibit 1.) On May 17, 2010, 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 on July 2, 2010, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on January 26, 2011. A notice of hearing was issued on March 3, 2011, scheduling the hearing for March 18, 2011. At the hearing the Government presented nine exhibits, referred to as Government Exhibits 1 through 9, which were admitted without objection. The Applicant presented nine exhibits, referred

to as Applicant's Exhibits A through I, which were admitted without objection. He also testified on his own behalf. The record remained open until close of business on April 20, 2011, to allow the Applicant to submit additional supporting 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 4, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

The Applicant is 41 years old and married. He is employed by a defense contractor as a Senior Consultant Field Engineer. 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.

The Applicant admits each of the delinquent debts set forth in the SOR. (See, Applicant's Answer to SOR.) Credit Reports of the Applicant dated June 3, 2009; November 18, 2009; February 18, 2010; August 3, 2010; February 13, 2011; and March 18, 2011, indicate that he was indebted to each of the outstanding creditors listed in the SOR, which totaled in excess of \$20,000.00. (Government Exhibits 2, 3, 5, 6, 8 and 9.) Since 1991, for almost twenty years, the Applicant has been working for his current employer. He obtained his security clearance in 1992, and he has had no security violations.

The Applicant and his wife have been married for 16 years. When they married in 1995, he took on her three children from a previous marriage. During their marriage, they had one child of their own. They live in City A, however the Applicant's job requires that he travel 70% of the time in and out of the continental United States. Since he is not home often, his wife handles the finances.

In 1997 the Applicant's wife was diagnosed with severe depression. (Tr. p. 52.) Several years later, in 2005, the Applicant and his wife refinanced their house and used the money they pulled out to pay off their vehicles and other credit card debt. (Tr. p. 60). In 2006, the Applicant co-signed for a BMW, mini cooper for their son. (Tr. p. 70). In 2007, his wife relapsed, her depression returned, and she had to stop working. (Tr. p. 56.) That year, while the Applicant was out of town working, she purchased another expensive vehicle for transportation. (Tr. p. 66.) She also used credit cards to purchase Christmas gifts that she could not afford. It was about this time that their

interest-only mortgage adjusted on their house and increased to \$5,500.00 monthly that the Applicant could not afford to pay. They fell behind on their debts.

The Applicant has been struggling with only his income to live on. His states that his family has been living on a tight budget and he has had to pick and choose which bills to pay and which not to pay. (Tr. p. 38.) He has been working overtime and traveling as much as possible in order to bring home more money to pay his delinquent debts. His wife was able to reduce the mortgage payment. He has also been paying child support for his child with another woman in the amount of \$1,200.00 monthly.

The Applicant's wife has undergone therapy and feels her condition is stable now. She has recently been hired by a company and will earn \$60,000 annually. (Applicant's Exhibit I and Tr. p. 35.) The Applicant indicates that he will now be able to pay off their debt. His wife has just completed a bookkeeping course to help with their finances. (Tr. p. 37.) She also took a tax preparation course to become a tax preparer. The Applicant and his wife are planning to repair their credit and refinance the house to further reduce the payment.

About a week before the hearing, the Applicant started contacting his creditors to either pay the debt or set up payment arrangements to resolve them. (Tr. pp. 39 and 74.) A delinquent debt owed to a creditor in the amount of \$13,290.87 remains outstanding. The Applicant has made a \$500.00 payment and arranged to make monthly payments of \$503.35 a month until the debt is paid off. (Applicant's Exhibit B.)

A delinquent debt owed to a creditor in the amount of \$2,521.00 has been settled for \$867.67, and is no longer owing. (Tr. pp. 42-43.)

A delinquent debt owed to a creditor in the amount of \$346.00 has been paid in full. (Applicant's Post-Hearing Exhibit C.)

A delinquent debt owed to a creditor in the amount of \$233.00 has been paid in full. (Applicant's Post-Hearing Exhibit D.)

A delinquent debt owed to a creditor in the amount of \$377.00 has been paid in full. (Applicant's Post-Hearing Exhibit E.)

Two delinquent debts were owed to the same creditor in the amounts of \$2,253.00 and \$2,952.67 respectively. In regard to the debt for \$2,952.67, the Applicant has agreed to settle the debt for \$1,737.35. He made a payment of \$1,400.00 toward the settlement amount and is scheduled to pay the remainder of \$337.35 on May 13, 2011. The debt in the amount of \$2,253.00 has been settled for \$1,134.00, and is paid off in full. (Applicant's Post-Hearing Exhibits F and G.)

A delinquent debt owed to a creditor in the amount of \$3,205.00 remains outstanding. The Applicant indicates that the debt is his wife's and they are in the process of settling it for \$2,100.00. (Applicant's Post-Hearing Exhibit H.)

The Applicant had two delinquent medical accounts in the amounts of \$62.00 and \$172.00 respectively. The Applicant contacted the medical group and there was no account in their records that was owed in the amount of \$62.00. The other delinquent debt was paid in full in the amount of \$246.53. (Applicant's Post-Hearing Exhibits I and J.)

The Applicant's wife testified that she handles all of the finances. They plan to clean up their credit and resolve their indebtedness. She stated that her husband is a hard worker who is responsible and trustworthy. (Tr. p. 32-55.)

Letters of recommendation from the Applicant's supervisor, manager, and customer reflect that the Applicant has a high degree of integrity, responsibility and ambition. He is said to be competent and trustworthy. He is considered an excellent team leader and is responsible for the supervision, oversight and mentoring of 20 employees. His leadership skills are a valuable asset to the company. They all recommend him for a security clearance. (Applicant's Exhibits E, F, G and H.)

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.(c) the person has received or is receiving counseling for the problem and/or there are clear indications that problem is being resolved or is under the control;

20.(d) the individual has 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 and surrounding circumstances;
- 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."

CONCLUSIONS

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 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 the Applicant's financial problems started when his wife relapsed into depression in 2007, and she stopped working. With only the Applicant's income to live on, their mortgage adjusted so high he could not afford to pay anything else. Since realizing how important it is to resolve his delinquent debts, although his steps have not been timely, he has taken reasonable steps to address his delinquent indebtedness. Until recently, his delinquent debts were numerous and significant. Over the past few weeks, however, the Applicant has been able to make substantial progress in resolving his debt. He has paid off all but one of his creditors, and has set up a payment plan to pay the remaining one. His wife, who handles most if not all of the household finances, is starting a new job and will be able to contribute to the family expenses. She has also taken some financial courses that she will use to keep the family on budget.

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.(c) *the person has received or is receiving counseling for the problem and/or there are clear indications that problem is being resolved or is under the control*, and 20.(d) *the individual has initiated a good faith effort to repay overdue creditors or otherwise resolve debts* also apply.

Under the particular circumstances of this case, the Applicant has demonstrated sufficient good judgment, and a good faith effort to resolve his indebtedness, and there is sufficient evidence of financial rehabilitation. He has demonstrated that he can properly handle his financial affairs. 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, and/or other characteristics indicating that the person may not properly safeguard classified information.

I have considered all of the evidence presented, and it does mitigate the negative effects of his financial indebtedness and its impact 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.
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.

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