



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 09-06445

Appearances

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

August 30, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on May 21, 2009. (Government Exhibit 1.) On February 9, 2011, 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 February 27, 2011, and March 1, 2011, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on March 17, 2011. A notice of hearing was issued on March 24, 2011, and the hearing was scheduled for April 12, 2011. At the hearing the Government presented eleven exhibits, referred to as Government Exhibits 1 through 11, which were admitted without objection. The Applicant called one witness and presented twenty exhibits, referred to as Applicant's Exhibits A through T. He also testified on his own behalf. The record remained open until close of business on April

26, 2011, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted four Post-Hearing Exhibits, which were admitted without objection, and are referred to as Applicant's Post-Hearing Exhibit 1 through 4. The official transcript (Tr.) was received on April 27, 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 47 years old and married. He has a Bachelor's Degree in Electrical Engineering. He is employed with a defense contractor as a Division Manager and is seeking to obtain a security clearance in connection with this 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 admitted allegations 1(a), 1(b), and 1(d) of the SOR. He denied allegations 1(c), and 1(e), with some explanations. Credit Reports of the Applicant dated June 3, 2009; July 1, 2010; November 4, 2010; and April 11, 2011; reflect that the Applicant was indebted to each of the creditors set forth in the SOR, in an amount totaling approximately \$45,000.00. (Government Exhibits 7, 8 9 and 11.)

The Applicant served on active duty in the United States Air Force from June 1986 to June 1991. During his five year military career, he received the Air Force Commendation Medal and Citation, and was honorably discharged as an officer. Since then he has worked in the defense industry and has held a security clearance since 1986. He has never had a security violation.

Prior to 2005 the Applicant had no delinquent debts, tax liens, charge offs or repossessions, and his credit was good. In 2005 the Applicant and his partner set up an S corporation to start a natural health care business. At first, the Applicant was working part-time; but by May 2007, it was a full time job and in full swing. Due to the combination of a bad economy, and a soured relationship with his business partner, the business failed and in April 2008 they closed the doors. The partner left abruptly, and the Applicant was saddled with all of the debt. As a result of the failed business, the Applicant became excessively indebted. Not only for debts directly related to the business such as the business licenses, the equipment leases, and credit cards that were all in his name, but since he had self-funded the business by pulling between \$260,000 and \$300,000 from his 401k, he was subject to penalties, and interest and back taxes. (Tr. p. 88.) In order to survive, the Applicant sold a lot of his household

goods, he was evicted from his rental house, and had to forego Christmas for the family. They were forced to move in with a friend.

In March 2009, the Applicant became employed and since then he has been addressing his delinquent debts. His plan was to first address his immediate personal and business debt, then the state and federal taxes, and then any other unsecured debt, such as credit card debt. (See Applicant's Answer to SOR.) As of present, he has paid over \$36,000 in debts, plus tax attorney and tax accountant fees in addition to his current living expenses.

The following debts set forth in the SOR became delinquent as a result of the failed business. A state tax lien was filed against the Applicant for tax year 2008, in the amount of \$1,390.00. The Applicant states that the accurate amount he owed was \$1,309.97. He filed his state, federal and corporate tax returns and entered into a payment plan to resolve the debt. (Applicant's Exhibits I, L, N and Q.) He has been making bi-monthly payments since July 2010. (Applicant's Exhibits A and C.) A state tax lien was filed against the Applicant for tax years 2007, in the amount of approximately \$25,700.00. The Applicant contends that the actual amount owed was \$12,137.00. He has filed his state, federal and corporate tax returns and has entered into a payment plan to resolve the debt. (Applicant's Exhibits H, K, M and P.) He has been making payments of approximately \$900.00 monthly since August 2010. (Tr. p. 59.) His current balance owed to date is only about \$4,615.43. (Applicant's Exhibits A and D.) The Applicant became indebted to a creditor for a debt owed in the amount of approximately \$5,212.00. He contends that the amount owed on the account was actually \$513.16. He has been making payments toward the debt since April 2009, and the balance currently owed is only \$313.16. (Applicant's Exhibits A and E.) The Applicant became indebted to a creditor in the amount of approximately \$12,000.00 in credit card debt. The Applicant plans to set up a payment plan to pay it once he has paid off his back taxes. (Applicant's Exhibits A and F.) The Applicant was indebted to a creditor in the amount of \$541.00. He has paid the debt in full. (Applicant's Exhibits A and G.)

The Applicant's wife testified that she keeps track of the finances in the household. Before her husband started his business, he had no charged off accounts, no tax liens or delinquent debts. After the business closed in September 2008, and until her husband became employed, they were unable to pay their debts. Since 2009 they have been cleaning up their credit. Their attorney filed the proper documentation to close the corporation and they started setting up payment plans with the tax authorities to pay their back taxes. (Tr. pp. 46-85.)

A letter from the Applicant's Facility Security Officer dated April 8, 2011, indicates that the Applicant began his employment through an employment agency and because of his outstanding performance and professional behavior, he was hired on as a permanent employee. He was subsequently promoted largely for his ethical and exemplary performance. He has kept her apprised of the details of his failed business in the past and his plan to resolve his indebtedness. The Applicant is said to show

integrity, and a willingness to maintain security at a high level. He was also instrumental in allowing their facility to secure the rating of "Commendable" in their Defense Security Service security inspection conducted on February 28, 2011. (Applicant's Exhibit T.)

In March 2010, the Applicant received a total bonus of \$14,500.00 from his employer for his outstanding work performance during 2009. (Applicant's Exhibit S.)

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; and,

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; and,

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 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 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, his failed business, caused his financial difficulties. Before he started his business, he paid his bills on time and he had good credit. When he and his partner fell out, the Applicant was stuck with all of the debt. He has taken responsibility for the debt and since 2009, has been working diligently within his means to satisfy his indebtedness.

Under the particular circumstance of this case, this was an isolated incident that will not recur since the Applicant no longer has the business. In addition, he has made a good-faith effort to resolve his past due indebtedness. Since 2009, he has paid off about \$36,000 in bad debt acquired as a result of the failed business. He has filed his personal and business tax returns and is paying his back taxes. Once they are paid in full, he will begin to resolve his remaining debt. He does not plan on incurring any new debt. He has acted reasonably, responsibly and prudently. He understands the importance of paying his bills on time and living within his means. He also knows that he must remain fiscally responsible in the future. There is clear 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, including the Applicant’s favorable military and work history. They mitigate the negative effects of his 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:

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| 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. |

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

