



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-08244
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Lynn Swenson, Personal Representative

February 3, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on June 5, 2009. (Government Exhibit 1.) On May 21, 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 12, 2010. He originally wanted an administrative decision without a hearing, but changed his mind and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on August 26, 2010. A notice of hearing was issued on September 29, 2010, and the hearing was scheduled for October 28, 2010. At the hearing the Government presented seven exhibits, referred to as Government Exhibits 1 through 7. The Applicant called one witness and presented twelve exhibits at the hearing, referred to as Applicant's Exhibits A through L. He also testified on his own behalf. The record

remained open until close of business on November 10, 2010, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted five Post-Hearing Exhibits, consisting of twenty-four pages, which were admitted without objection, as Applicant's Post-Hearing Exhibits A through E. The official transcript (Tr.) was received on November 12, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 61 years old, and unmarried. He is employed as a Senior Electronics Technician by a defense contractor 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 denies all of the allegations set forth in the SOR, except 1(c), and 1(d). Credit Reports of the Applicant dated June 19, 2009; March 23, 2010; and August 3, 2010; reflect that the Applicant is indebted to each of the creditors set forth in the SOR, totaling in excess of \$80,000, in delinquent credit card loans, equity loans and mortgage loans. (Government Exhibits 4, 5 and 6.)

The Applicant was working for a defense contractor and making \$72,000 annually. He learned of an opportunity to earn more money, and in 2005, he started a janitorial supply company, with expectations of earning \$400,000 a year. He paid \$200,000 for the business that he borrowed against his house. (Tr. p. 56.) The business was successful until 2007, when due to the poor economy, clients stopped paying their bills and the Applicant was forced to lay off his employees. In February 2010, the Applicant finally closed the business. Recently, the Applicant entered into an oral agreement to sell the business. He turned over \$40,000 worth of supplies and inventory and his client list to the purchaser. The Applicant has not been paid for the business as of yet. He hopes to receive approximately \$100,000. The Applicant started working for his current employer in May 2009, and brings home \$3,000 monthly. (Tr. p. 127)

The Applicant owns three properties. Two are rental properties, one of which he inherited. His third property is his primary residence. Each of the properties have two mortgages or an equity line of credit. In regard to the rental properties, at some point, the tenants were not paying the rent, and the Applicant fell behind on the payments.

Both of the rental properties are now rented. One of the rental properties now covers the mortgage payment. The other rental property's rent does not cover the mortgage payments. The Applicant has applied for loan modifications on each of his three properties. One of the rental properties has recently been approved for a loan modification and will reduce his mortgage payment. The Applicant believes he can afford to make the payment. He is also in the process of undergoing a loan modification on his personal residence. Although he has thought about putting his properties up for sale, he has not listed them yet. (Tr. pp. 113 and 120; and Applicant's Exhibit L) Assuming each of the properties is approved for loan modification, the Applicant will still be in the red. (Applicant's Post-Hearing Exhibits A through E.)

To keep the business afloat, the Applicant used credit cards and his equity lines of credit on his homes. He became indebted to the following creditors. 1(a) He is indebted to a creditor in the amount of \$581.00. He states that he sent in the check to pay the bill, but the creditor has failed to cash the check. (Applicant's Exhibit I.) 1(b) He is indebted to a creditor in the amount of \$204.00. The Applicant testified that he paid the debt. (Tr. p. 72 and Applicant's Exhibit J.) 1(c) He is indebted to a creditor in the amount of \$14,041.00. The Applicant states that the law firm has reduced the amount owed to settle the matter in full for \$5,158.00. (Tr. p. 73 and Applicant's Exhibit B.) 1(d) He is indebted to a creditor in the amount of \$1,026.00. The Applicant made a payment of \$300.00 and still owes \$726.00. (Tr. p. 78.) 1(e) He is indebted to a bank in the amount of \$10,050.00 for a home equity line of credit. The Applicant is awaiting approval for a loan modification. (Applicant's Exhibit H.) 1(f) He is indebted to a bank in the amount of \$23,592.00 for an account that has been charged off. This debt remains outstanding, however, the law firm is working to reduce the amount owed. (Tr. p. 81.) 1(g) He is indebted to a bank for a real estate mortgage that is past due in the approximate amount of \$11,227.00. The Applicant was recently approved for a loan modification, and has not yet begun making payments under the agreement. 1(h) He is indebted to a bank on a real estate mortgage that is past due in the approximate amount of \$23,563.00. The Applicant is awaiting approval on a loan modification. (Tr. p. 92.) 1(i) He is indebted to a bank for a real estate mortgage that is past due in the amount of \$1,944.00. The loan modification was approved, but the Applicant has not yet begun to making payments under the agreement.

In October 2008, the Applicant hired a law firm to work with his creditors and settle his delinquent balances. (Applicant's Exhibits D and K.) Since then, he has been making monthly payments of \$798.00 that is applied to his delinquent debts. (Government Exhibits 2 and 3.) The Applicant hopes to be out of debt in one year. (Tr. p. 75.)

The Applicant testified that he plans to sell one of his rental properties and to rent his primary residence. The other rental house he believes he can afford to keep. This will free up sufficient monies that will allow him to get out of debt and pay his bills on time. (Tr. p. 134.)

The Applicant's girlfriend, who has been with the Applicant off and on for the past sixteen and a half years, and who currently lives with him, testified that she has never seen him engage in any illegal activities, risky behavior, heavy drinking, gambling or drug use. She considers him to be one of the finest men she has ever met. She believes that he handles his finances well. (Tr. pp. 39-42)

Letters of recommendation from the Applicant's supervisor, coworkers and friends of the Applicant attest to his years of experience, outstanding work ethic, honesty, trustworthiness, hardworking nature, and conscientiousness. He is said to be a positive role model who is well respected and an asset to the organization. (Applicant's Exhibits E and G.)

A letter from the Facility Security Officer indicates that the Applicant is a valued employee and is recommended for a position of trust. (Applicant's Exhibit F.)

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:

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 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 predicted 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 beyond his control, namely a business venture that went bad, caused him to become excessively indebted. Adjusting to living on \$3,000 a month from what he had been earning during the good times has obviously been difficult. He has tried to pay his bills, but has not been able to get a good handle on the matter. Although he hired a law firm in 2008, over three years ago, to help resolve his financial affairs he still remains indebted. He is now again in the process of starting to resolve his delinquent debts. Recently, he entered into an oral agreement to sell the business. He turned over his left over assets and his client list to the purchaser. He has yet to receive money for the exchange. By failing to get the agreement in writing, he did not follow prudent or responsible business practices. Given the extent of his indebtedness, and the fact that he has only started the process, he presently does not qualify for access to classified information. Mitigating Condition 19(b) does not apply because the Applicant has not acted responsibly under the circumstances.

Under the particular circumstances of this case, the Applicant's delinquent debts remain owing and have not yet been addressed. His plan to rent his primary residence has not been completed, only one of the loan modifications on his properties have been approved, and it is unclear whether he will have enough money to pay all of his bills. There is insufficient evidence of financial rehabilitation at this time. The Applicant has not clearly demonstrated that he can properly handle his financial affairs or that he is fiscally responsible. Considering all of the evidence, the Applicant has not 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 obligations* apply. None of the mitigating conditions are applicable. Accordingly, I find against 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 poor judgement, untrustworthiness, unreliability, lack of candor, an unwillingness 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. However, it does not 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 not overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against 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:	Against the Applicant.
Subpara. 1.a.:	Against the Applicant.
Subpara. 1.b.:	Against the Applicant.
Subpara. 1.c.:	Against the Applicant.
Subpara. 1.d.:	Against the Applicant.
Subpara. 1.e.:	Against the Applicant.
Subpara. 1.f.:	Against the Applicant.
Subpara. 1.g.:	Against the Applicant.
Subpara. 1.h.:	Against the Applicant.
Subpara. 1.i.:	Against the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge

