



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



In the matter of:)	
_____)	
SSN: _____)	ISCR Case No. 09-08321
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Department Counsel
For Applicant: *Pro se*

August 30, 2010

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) dated October 2, 2009. (Government Exhibit 1.) On February 19, 2010, 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 March 3, 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 six exhibits referred to as Government Exhibits 1 through 6, which were admitted into evidence without objection. The Applicant presented seven

exhibits, referred to as Applicant's Exhibits A through G, which were admitted without objection. The Applicant also testified on his own behalf. The record remained open until close of business on May 21, 2010, to allow the Applicant to submit additional documentation. The Applicant submitted eleven Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits 1 through 11. 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 31 years old and has a Bachelor's Degree in Mathematics and is pursuing his MBA in Business Administration. He is employed by a defense contractor as a Logistics Analyst 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 delinquent debts set forth in the SOR under this guideline that include unpaid debts totaling in excess of \$16,000. Credit Reports of the Applicant dated October 10, 2009; January 27, 2010; and March 19, 2010; collectively reflect each of the delinquent debts set forth in the SOR. (Government Exhibits 3, 4 and 5.)

The Applicant attended the United States Naval Academy Prep School from 1997 to 1998. He then attended the Naval Academy from 1998 to May 2002. In 2004, he got married. He served in the United States Navy until 2007. When he left the Navy in 2007, he pursued different network marketing ventures. These jobs were multi-level marketing opportunities that did not come with a base pay, only commission. The pay was not enough to support his family and he turned to credit cards. As a result, in 2008 and 2009, he became indebted to each of the creditors set forth in the SOR. Although he started pursuing other full time positions, until his current employment, he was unable to earn enough money to resolve his past due indebtedness. (Tr. p. 35.)

The Applicant has been working diligently to resolve his indebtedness. A debt in the amount of \$1,202.00 to a bank has been settled. (Tr. p. 23, and Applicant's Exhibit A.) The Applicant is in the process of paying off a debt to a bank in the amount of

\$11,766.00. For the past four months, he made payments on the debt. His payment plan requires him to pay \$75.00 monthly. (Tr. pp. 25 -27, and Applicant's Exhibit B.) A debt in the amount of \$1,185.00 owed to a department store has been resolved. (Applicant's Exhibit C.) A debt in the amount of \$1,416.00 has been resolved. (Applicant's Exhibit D, and Tr. pp. 29-30.) A debt owed to a cellular telephone company in the amount of \$818.00 has been settled. (Tr. pp. 30 - 31, and Applicant's Exhibit E.) A debt owed to a bank in the amount of \$2,113.00 has been settled. (Tr. pp. 32-33.)

Applicant's personal financial statement indicates that at the end of the month, after paying his monthly expenses, he has a net remainder of \$337.32. This includes a regular monthly payment of \$100.00 toward his largest debt of about \$11,700. Applicant plans to continue making payments on the debt until it is paid in full.

Letters of recommendation from the Applicant's pastor, and from a Special Agent from the Drug Enforcement Administration, who know the Applicant well, attest to his strong moral character, leadership abilities, positive attitude, trustworthiness, and reliability. He is strongly recommended for a position of trust. (Applicant's Exhibit G.)

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 condition 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 his loss of Navy employment, difficulty finding a decent paying civilian job, and his reliance on credit cards, caused his financial hardship. Since starting his new employment, he has been prudent and exercised good judgment in an effort to resolve his debts. He has paid off all but one of his delinquent debts, or otherwise resolved them. He is making regular monthly payments on the debt that is outstanding and plans to continue doing so until the debt is paid in full. 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. He also understands that he must maintain financial responsibility at all times.

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 condition 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.

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