



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-08528
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

November 10, 2010

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Questionnaire for Sensitive Positions (SF-86) on July 13, 2009. (Government Exhibit 1.) On July 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 August 20, 2010, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on September 9, 2010. A notice of hearing was issued on September 28, 2010, and the hearing was scheduled for October 19, 2010. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6. The Applicant presented no exhibits at the hearing. He testified on his own behalf. The record remained open until close of business on November 2, 2010, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted

two Post-Hearing Exhibits, which was admitted without objection, as Applicant's Post-Hearing Exhibits A and B. The official transcript (Tr.) was received on October 26, 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 41 years old, and married with five children. He has a high school diploma and has completed several courses at a junior college. He was previously employed with a defense contractor as a Field Engineer Technician II, and if he obtains a security clearance, he will be rehired. He 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 and his wife started a family at a young age. He testified that he had his first child when he was twenty-two. A year later, his wife had triplet girls. Several years later they had another child. He has been financially responsible for supporting his five children and wife, while she takes care of the children, the house, and paying the bills. Over the years, given the size of the family, they have struggled with finances.

In May 2003, the Applicant filed for Chapter 7 Bankruptcy and discharged approximately \$50,000 in medical bills related to the birth of his premature triplets, and other miscellaneous credit card debt. Following this, he worked hard to clean up his credit and keep it in good standing. In 2006/2007, he purchased a house with an adjustable rate mortgage. The plan was that after a year, he would refinance the loan on the house to make it more affordable. He was unable to do this given the housing market crash. Instead, the mortgage increased from \$3,000 to \$3,500 monthly. (Tr. p. 56.) For the past year and a half the mortgage has been frozen and under review for modification. (Tr. p. 57.) The Applicant explained that during this period he has not made any payments to the bank for the house.

The Applicant testified that although he has been working, he has not been earning enough money to pay his bills and support his family. He has never held a security clearance before, but without one, he has been unable to work full time with the defense contractor that hired him. To support his family, he went back to working as an independent contractor in the wireless industry. He has recently started working two jobs, days at one company, and nights at another, to help get himself out of debt. (Tr.

p. 61.) He currently brings home \$12,000 a month. He states that he has contacted some of his creditors to set up payment plans and has paid some of his delinquent debts. He recently caught up with his car payments that were four months behind on one car, and two months behind on another. He has also paid the vehicle registrations for both cars that had been late. He indicates that he has caught up with the household bills and is continuing to make payments for utilities. He states that he has also paid off one student loan in the amount of \$2,983.00. (Applicant's Post-Hearing Exhibit A.)

The Applicant admits to each of the debts set forth in the SOR. Credit Reports of the Applicant dated August 20, 2009; June 23, 2010; September 7, 2010; and October 18, 2010; reflect that the Applicant was indebted to each of the creditors set forth in the SOR, for credit cards, student loans, and telephone bills, in an amount totaling approximately \$35,000.00 not counting his mortgage arrearage. (Government Exhibits 3, 4, 5 and 6.) The following delinquent debts are listed in the SOR: Allegation 1(b). A debt owed to a creditor in the amount of \$484.00 remains outstanding. Allegation 1(c). A debt owed to a creditor in the amount of \$887.00 remains outstanding. Allegation 1(d). A debt owed to a creditor in the amount of \$648.00 remains outstanding. Allegation 1(e). A debt owed to a creditor in the amount of \$5,933.00 remains outstanding. Allegation 1(f). A debt owed to a creditor in the amount of \$3,589.00 remains outstanding. Allegation 1(g). A debt owed to a creditor in the amount of \$87,848.00 remains outstanding. Allegation 1(h). A debt owed to a creditor in the amount of \$4,916.00 remains outstanding. Allegation 1(i). A debt owed to a creditor in the amount of \$5,941.00 remains outstanding. Allegation 1(j). A debt owed to a creditor in the amount of \$789.00 remains outstanding. Allegation 1(k). A debt owed to a creditor in the amount of \$10,010.00 remains outstanding. Allegation 1(l). A debt owed to a creditor in the amount of \$57,831.00 remains outstanding. (Applicant's Answer to SOR and Tr. pp. 37-70.) The Applicant has not provided any documentary evidence to support the fact that he has paid off, or starting making payments toward any of the debts set forth in the SOR.

The Applicant and his wife have received marital and financial counseling from the pastors at their church. They have recently contacted an attorney and plan to file for Chapter 13 bankruptcy to repay their delinquent debts. They were advised that they must first clear up a tax matter. They have filed an appeal with the tax court and are awaiting a hearing date. They are still waiting for the results of the loan modification on their home. (Applicant's Post-Hearing Exhibit A.)

A letter from the Applicant's pastor who has known the Applicant for about nine years, describes the Applicant as faithful and trustworthy. He is a committed husband and father and an individual with a high level of integrity. He is considered to be a valuable asset to their ministry and the community in which he serves. (Applicant's Post-Hearing Exhibit B.)

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 the Applicant's unexpectedly large family, the housing market crash, his inability to refinance the mortgage on his house, and poor financial management have caused his financial difficulties. He is now working two jobs to pay his delinquent debts. He has recently contacted an attorney and plans to file for Chapter 13 Bankruptcy. He is in the process of resolving his delinquent debts. However, at the present time, his financial indebtedness remain excessive.

Under the particular circumstances of this case, the Applicant's delinquent debts remain owing. His plan to file bankruptcy has not been completed, and he has not started a payment plan with his creditors. 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 obligation* 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, and 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.
Subpara. 1.j.: Against the Applicant.
Subpara. 1.k.: Against the Applicant.
Subpara. 1.l.: 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