



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 09-08705

Appearances

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

December 12, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) dated September 17, 2009. (Government Exhibit 1) On June 20, 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 July 17, 2011, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on September 8, 2011. A notice of hearing was issued on September 26, 2011, and the hearing was scheduled for October 12, 2011. At the hearing the Government presented seven exhibits, referred to as Government Exhibits 1 through 7 that were admitted without objection. The Applicant presented five exhibits, referred to as Applicant's Exhibits A through E that were admitted without objection. He also testified on his own behalf. The Applicant requested that the record remain open to

submit additional documentation. The record remained open until close of business on November 2, 2011. The Applicant submitted no Post-Hearing Exhibits. The official transcript (Tr.) was received on October 21, 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 54 years old, and married with four children and two grand children. He has a high school diploma and two years of college. He is employed as a De-Processing Lead or Mechanic Manager with a defense contractor 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). 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 that he was indebted to each of the creditors for delinquent tax liens and debts listed in the SOR under this guideline. Credit Reports of the Applicant dated September 25, 2009; August 10, 2010; March 23, 2011; and October 3, 2011, confirm that the Applicant was indebted in an amount totaling in excess of \$20,000 to these creditors. (Government Exhibits 2, 3, 5, and 7.)

From 1998 to 2004, the Applicant and his wife experienced marital difficulties, had an on and off again relationship, and lived separately. The Applicant consistently gave her money to pay the household expenses but she was not using it for that purpose. He later learned that she was taking care of a younger man at the Applicant's expense, using the money to buy him nice clothes etc. For work purposes, the Applicant lived in one state, where he rented a house, and his wife lived in another house that the Applicant and his siblings own together. He traveled back and forth to see her to try to work things out on a number of occasions. In 2000, his wife was diagnosed with colon cancer, and the Applicant also tried to take care of her medical expenses. In 2004, the Applicant and his wife reunited, and the Applicant started traveling overseas for work assignments. The added expenses that occurred as a result of their separation, caused the Applicant to fall behind on his financial obligations.

The following debts became delinquent and owing. Recently, the Applicant has been working to resolve his debt. He hired a tax resolution service to help him file his state and federal income tax returns and to resolve his tax liens. (Applicant's Exhibit B.) The Applicant testified that a debt owed to a creditor in the amount of \$662 has been paid in full. (Applicant's Exhibit A and Tr. pp. 50-51.) A debt owed to a creditor in the

amount of \$138 has been paid. (Applicant's Exhibit A.) A judgment entered against him for a debt owed to a creditor in the amount of \$930 remains outstanding, but he plans to pay it. (Tr. pp. 53-54.) A debt owed to a state A taxing authority for a tax lien in the amount of \$7,264 is in the process of being resolved. (Applicant's Exhibit B.) A debt owed to a state B taxing authority in the amount of \$497 has not been resolved. (Tr. p. 53.) A debt to the federal tax authorities for a tax lien in the amount of \$7,662 is in the process of being resolved. (Government Exhibit B.) A debt owed to state A taxing authority for a tax lien in the amount of \$5,315 is in the process of being resolved. (Government Exhibit B.) A debt owed to state A taxing authority for tax lien in the amount of \$1,592 is in the process of being resolved. (Government Exhibit B.) A debt owed to a creditor in the amount of \$661 has been paid. (Applicant's Exhibit A.) A debt owed to a creditor in the amount of \$1,069 has been paid. (Applicant's Exhibit A.) A debt owed to a creditor in the amount of \$1,575 has been paid. (Applicant's Exhibit A.) A debt owed to a creditor in the amount of \$1,309 has been paid. (Applicant's Exhibit A.) The Applicant testified that a debt owed to a creditor in the amount of \$317 has been settled. (Tr. p. 68.) He is not sure as to the status of debts owed to creditors in the amount of \$480 and \$152. (Tr. p. 68.) A debt owed to a creditor in the amount of \$74 has been paid. (Applicant's Exhibit A.)

Applicant's financial statement indicates that after paying his regular monthly expenses, he had \$10.00 left at the end of the month. (Government Exhibit 4.) He indicates that his situation has changed because his family is now living together with him, including his wife, two daughters and their two children, and he has more discretionary money to use to pay his bills. In fact, he states that he will soon have an additional \$1,750 a month to use toward his delinquent debts. (Tr. p. 81.) He no longer has to pay for his grand daughters child care of \$740, his daughters medical insurance of \$650, and his payment to a creditor in the amount of \$350.00 as it will be paid in full next month. (Tr. p. 78-80) He is currently the sole financial supporter of his wife, adult children and his two grandchildren.

Letters of recommendation from the Maintenance Supervisor, a site manager and other professional associates, that know and have worked closely with the Applicant for a number of years indicate that he is highly intelligent, good analytically, has excellent communication skills, is well organized, highly respected by his co-workers, diligent, easily reachable and always on time. He is trustworthy and reliable and considered a valuable asset to the organization. He is highly recommended for a security clearance. (Applicant's Exhibit C.)

The Applicant has received a number of awards and commendations for his outstanding support and service to the Government on overseas assignments. (Applicant's Exhibit D.) He also had a feature story published in the employer's monthly newsletter. (Applicant's Exhibit E.)

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 obligations.

Conditions that could mitigate security concerns:

20.(b) the conditions that resulted in the financial problems 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 his control, namely his six years of marital discord and separation from his wife from 1998 to 2004, an effort to maintain two households with one income, and her medical illness and related expenses, caused the Applicant's financial indebtedness. The Applicant and his wife have now reunited and are living together. Recently, the Applicant has been working hard to resolve his indebtedness. He has paid off many of his delinquent debts and plans to continue to resolve all of them. He has hired a tax resolution company to assist him in filing his tax returns and resolving his delinquent state and federal taxes. Given the fact that his work assignment is overseas, the Applicant has done the best he could under the circumstances, and as much as humanly possible to resolve his financial problems from a distance. He now realizes he must get them completely resolved as soon as possible.

Under the particular circumstance of this case, the Applicant has made a good faith effort to resolve his past due indebtedness. 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. Although he has not resolved all of his debts, he is well on his way to doing so. There is sufficient evidence of financial rehabilitation. The Applicant has demonstrated that he can properly handle his financial affairs and that he is fiscally responsible. In the event that the Applicant fails to resolve his remaining delinquent debt, his security clearance will be in immediate jeopardy. However, 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 obligations* apply. However, Mitigating Conditions 20.(b) *the conditions that resulted in the financial problems 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 testimony, letters of recommendation, and dedicated 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:

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.
Subpara. 1.k.:	For the Applicant.
Subpara. 1.l.:	For the Applicant.
Subpara. 1.m.:	For the Applicant.
Subpara. 1.n.:	For the Applicant.
Subpara. 1.o.:	For the Applicant.
Subpara. 1.p.:	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