



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



In the matter of:)
)
-----) ISCR Case No. 10-00047
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Joseph Testan, Attorney At Law

February 29, 2012

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing dated August 19, 2009. (Government Exhibit 1.) On August 2, 2011, 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 access to classified information for the Applicant and recommended referral to an Administrative Judge to determine Applicant’s eligibility for a security clearance.

The Applicant responded to the SOR on September 14, 2011, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to this Administrative Judge on November 30, 2011. A notice of hearing was issued on December 7, 2011, scheduling the hearing for January 18, 2012. The Government presented six exhibits, referred to Government Exhibits 1 through 6, which were admitted without objection. The Applicant called one witness (his ex-wife) to testify and submitted thirteen documentary exhibits, referred to as Applicant’s Exhibits A through

M, which were admitted without objection. He also testified on his own behalf. The official transcript (Tr.) was received on January 26, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for a security clearance 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 52 years old and divorced. He is employed by a defense contractor as a Crew Chief on an Aircraft Program, and he 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 clearance because he is financially overextended and at risk of having to engage in illegal acts to generate funds.

The Applicant admits each of the delinquent debts set forth in the SOR, except 1(b). (See, Applicant's Answer to SOR.) Credit reports of the Applicant dated August 27, 2009; September 20, 2010; April 4, 2011; and January 17, 2012, collectively reflect that at one time each of the delinquent debts set forth in the SOR totaling approximately \$100,000 were at one time owing. (Government Exhibits 3, 4, 5 and 6.)

The Applicant has been working for his current employer for over twenty years. He has held a security clearance since October 2007, and he has no security violations.

The Applicant and his wife were married in 1992. His wife had two daughters from a previous relationship that the Applicant has helped raise. (Tr. p. 40.) From 1992 to about 2005, the Applicant paid all of the household bills and handled the finances. During that time he maintained good credit. In 2006, the Applicant's job required that he deploy in and out of the country for extended periods of time, which varied from weeks to as long as several months. (Applicant's Exhibit L.) During this time, he earned as much as \$175,000 a year with per diem and hazardous duty pay. (Tr. pp. 94 - 95.) At that point, he turned over the responsibility of paying the household bills to his wife. He gave her his check and trusted her to pay the bills. He lived frugally and responsibly. He initially tried to help his wife with the bill paying by leaving envelopes with instructions on them for her, but she became upset and insulted. At some point, the Applicant allow her to handle the finances herself. His wife assured him that she was taking care of the bills without problems, and he believed her. In reality, she was falling behind on the bills and they were snowballing.

By 2008, the Applicant realized that his wife was having some problems paying the bills. They took a credit counseling program designed for his wife to assist her with paying the bills. (Applicant's Exhibits J and K.) His wife assured the Applicant that the credit counselors were automatically taking payments out of their checking account to pay the bills. The Applicant trusted his wife and believed her when she told him that the bills were being taken care of, when in fact they were not.

In 2009, the Applicant was interviewed by an investigator from the defense department, and was stunned to learn that his wife had lied to him and had not been paying their bills. (Tr. p. 67.) His wife once again assured him that she was taking care of their finances and making their payments.

In 2010, the Applicant's wages were garnished. (Tr. p. 70.) At this point, he realized that his wife had been continually lying to him. This time he confronted her and she admitted that she had been lying to him. She stated that she had hidden the late bills and notices from bill collectors from him. She hid the mail box key from him so he was unable to access the mail. She would also unplug the telephone so the telephone would not ring with bill collectors.

The Applicant's wife testified that instead of paying the household bills, she would give money to his daughter who had a baby, and whose husband was laid off from his job. She would also go to the casino and gamble. (Tr. pp. 49-50.)

In January 2011, the Applicant filed for divorce that was finalized in July 2011. (Tr. p. 74.) To resolve his excessive indebtedness, he hired an attorney and filed for Chapter 13 bankruptcy relief in September 2011. (Tr. pp. 74 -75 and Applicant's Exhibits A and C.) Instead of discharging his debt, he wanted to pay his creditors what he owed. Although the payment plan has not yet been confirmed, the proposed Chapter 13 bankruptcy has claims in the amount of approximately \$62,000. (Applicant's Exhibit B.) The Applicant's payments under the plan are anticipated to be between \$1,000 or \$1,200 a month for five years to resolve the debt. He has already made several payments according to the plan and intends to follow through with it until he is debt free. (Applicant's Exhibit D.)

The Applicant has incurred no new debt since filing for Bankruptcy. Since divorcing his wife, he is current on all of his monthly expenses and is ahead on his alimony. His personal financial statement dated January 17, 2012, indicates that he is current with all of his monthly expenses, and that after paying his bills, he has discretionary funds left over at the end of the month. (Applicant's Exhibit M.)

Letters of recommendation from the Applicant's supervisor, coworkers and customer describe the Applicant as honest, dependable, dedicated, hardworking, skilled, valuable to the organization, and a person of integrity and high moral standards. (Applicant's Exhibit F.)

Applicant's performance appraisals for 2007 through 2010 reflect that he has either met, exceeded or far exceeded his job requirements in every category. (Applicant's Exhibit H)

The Applicant has also received awards and commendations for his work performance. (Applicant's Exhibit G.)

POLICIES

When evaluating an Applicant's eligibility for a security clearance, the Administrative Judge must consider the disqualifying and mitigating conditions in the Adjudicative Guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common-sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as "the whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by Applicant or proven by Department Counsel" The Applicant has the ultimate burden of persuasion as to obtaining a favorable security clearance decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such, decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

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;

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 granted to only those defense contractor employees who must be counted upon to safeguard such classified 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

eligibility for 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 and access to classified information.

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 excessive indebtedness was caused by circumstances largely beyond his control, namely his irresponsible wife who was supposed to be paying the bills while he was deployed. For several years she lied and misled the Applicant into believing that she was paying the bills, and that their household finances were under control, when in fact they were not. During this period, the Applicant did not live beyond his means or spend lavishly. He gave his check to his wife with the understanding that she was to pay the bills. Instead of paying their bills, she gave money to her daughter and went to the casino to gamble. Since realizing that she lied to him, the Applicant divorced his wife, and filed for Chapter 13 bankruptcy to resolve his delinquent debts. Each of the debts listed in the SOR have been included in the Chapter 13 bankruptcy petition. Under the circumstances, and with the resources available to him, he has done everything humanly possible to show that he is responsible, trustworthy and reliable. At this point, it is obvious that he is working to rebuild his credit.

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 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 circumstance*; 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. 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.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his Financial Considerations. 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.
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.

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