



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-00106

Appearances

For Government: Melvin A. Howry, Department Counsel
For Applicant: Adam M. Zolonz, Attorney At Law

September 6, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing dated July 10, 2009. (Government Exhibit 1.) On March 17, 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 April 8, 2011, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to this Administrative Judge on May 24, 2011. A notice of hearing was issued on June 14, 2011, scheduling the hearing for July 20, 2011. The Government presented ten exhibits, referred to Government Exhibits 1 through 10, which were admitted without objection. The Applicant presented submitted ten documentary exhibits, referred to as

Applicant's Exhibits A through J, which were admitted without objection. He testified on his own behalf. The record remained open until close of business on August 17, 2011, to allow the Applicant the opportunity to submit additional documentary evidence. The Applicant submitted seven documentary exhibits referred to as Applicant's Post-Hearing Exhibits A through G, which were admitted without objection. The official transcript (Tr.) was received on August 5, 2011. 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 31 years and unmarried. He was employed by a defense contractor as a Military Tactical Advisor, and was removed from the position pending the outcome of this decision. 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 allegations 1(b), 1(c), 1(d), 1(e), 1(f), and 1(g) of the delinquent debts set forth in the SOR. He denies allegations 1(a), 1(h), 1(i), 1(j), 1(k), and 1(l.) (See, Applicant's Answer to SOR.) Credit Reports of the Applicant dated September 10, 2009; November 12, 2010; February 24, 2011; and July 13, 2011, collectively reflect that at one time each of the delinquent debts set forth in the SOR were at one time owing. (Government Exhibits 2, 3, 8 and 10.)

After graduating from high school in 1998 the Applicant joined the United States Marine Corps in December 1999. In January 2000 he went to boot camp, and then graduated from platoon honor guard, receiving the highest award for the top recruit. He became an infantryman, was quickly promoted, and became a Sergeant in the Marine Corps in three years. Based upon his leadership skills, he was selected for advanced infantry squad leader school. He was a squad leader responsible for 10 to 15 Marines at any given time. When he went out on certain missions, he was responsible for 30 Marines with attachments. He served in Iraq during the invasion. Among other accolades he received a Good Conduct Medal. He was released from active duty in 2004. He immediately enrolled in college and started taking classes to improve himself. He worked as a body guard for four months, and was then laid off. Since then he has

held six or seven different jobs trying to find something suitable. In 2009, he was hired by his current employer and has been working full time since then. (Tr. p. 50.)

The delinquent debts set forth in the SOR were mainly accumulated after leaving the military, and while he did not have steady full time work or financial stability. Since becoming gainfully employed in 2009 he is now earning approximately \$46,500.00 annually, and he has been working hard to resolve his indebtedness. (Tr. p. 50.) He has hired a credit and financial counseling service to help him improve his financial awareness and to help him clean up his credit. (Applicant's Post-Hearing Exhibit C and Tr. p. 56.) He has paid off or resolved all but one of his delinquent debts. He testified that he soon plans to pay the debt owed to a creditor in the amount of \$12,060.00 that is set forth in 1(g) fo the SOR. (Tr. p. 97.)

The Applicant explained that he does not have a lot of the receipts because he has been moving and has lost track of them. (Tr. p. 51.) He has, however, provided documentary evidence concerning conversations he has had with the respective creditors. (Applicant's Post-Hearing Exhibits D, E and F.)

The following debts have either been paid, are currently being paid through regular monthly installments or are in dispute: 1(a). A debt owed to a creditor in the amount of \$302.00. (Applicant's Exhibit E.) 1(b). A debt owed to a creditor in the amount of \$1,368.00. (Applicant's Exhibit C.) 1(c). A debt owed to a creditor in the amount of \$997.00. (Applicant's Exhibits H and I.) 1(d). A debt owed to a creditor in the amount of \$2,543.00. (Applicant's Post-Hearing Exhibit F.) 1(e). A debt owed to a creditor in the amount of \$1,511.00. (Applicant's Post-Hearing Exhibit F.) 1(f). A debt owed to a creditor in the amount of \$1,383.00. 1(j). A debt owed to a creditor in the amount \$544.00. (Applicant's Exhibit E.) 1(k). A debt owed to a creditor in the amount of \$120.00. 1(l). A debt owed to a creditor in the amount of \$325.00 is in the process of being removed from his credit report. (Applicant's Post-Hearing Exhibit D.)

Based upon the evidence, in regard to allegations 1(h), and 1(i), the Government moved to strike the allegations. (Tr. p. 86.) The tax lien in the amount of \$42,579.00 owed to the Internal Revenue Service is not the Applicant's debt, but his father's who has the same name. (Tr. p. 56.) 1(i). The judgment owed to a creditor in the amount of \$2,053.00 is not the Applicant's debt, but his father's who has the same name. (Tr. p. 57.) The motion to strike was granted. (Tr. p. 86.)

Although the Applicant qualifies for a credit card, he does not want one. He lives a very simple life and does not overspend.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for a security clearance because he intentionally falsified material aspects of his personal background during the security clearance process.

The Applicant denies the allegation set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) The Applicant completed a security clearance

application dated July 10, 2009. (Government Exhibit 1.) Question 26 states: "For the following, answer for the last seven years, unless otherwise specified in the question. Disclose all financial obligations including those for which you are a cosigner or guarantor." Question 26(b), "Have you had any possessions or property voluntarily or involuntarily repossessed or foreclosed?" 26(d), "Have you had a judgment entered against you?" 26(g), "Have you had bills or debts turned over to a collection agency?" 26(k), "Have you had your wages, benefits, or assets garnished or attached for any reason?" 26(m), "Have you been over 180 days delinquent on any debts?" 26(p) "Are you currently delinquent on any Federal debt?" The Applicant answered, "No" to each question and failed to disclose any of his delinquent debts set forth in the SOR.

The Applicant explained that it was during a live fire exercise with students when he was called into his supervisor's office and requested to complete the security clearance application. He stated that he was required to complete the application that day and not to get up from the computer until he was finished. He answered all of the questions by recollection, as he had no references to go by with him. He felt pressured. He states that he answered all of the financial questions with a "No" because he did not have the information on hand. He stated that he was certainly not trying to hide anything from the Government. (Tr. p. 76 - 77.) He further stated that he went to his supervisor and told him that he did not have all of the information he needed to answer the questions, and was led to believe that it was not that important. (Tr. p.78.) He now realizes his lack of judgment and that he made a serious mistake that will never happen again.

Although the Applicant is no longer in the Marines, he still considers himself to be one. He states that he lives by the credence of honor, courage and commitment. (Tr. p. 84.) During his military career, the Applicant received numerous medals, awards, commendations and certificates for his outstanding service to our country. (Applicant's Post-Hearing Exhibit B.)

A number of letters of recommendation submitted on behalf of the Applicant from his Platoon Commander in the Marines; several firefighters, one of whom works for the Department of Defense; a Detective with a County Police Department; his site manager; the Range Master where the Applicant is assigned, and several friends collectively indicate that the Applicant is a responsible, unselfish, honest individual who is dedicated to his job and considered a true asset to his company. He is described as always positive, a true leader, a man of integrity and honor, and an efficient professional at all times. He is highly recommended for a security clearance. (Applicant's Post-Hearing Exhibit A.)

A letter from the Applicant's recent college professor is quite laudatory about the Applicant's character. He considers the Applicant a person of good judgment, highly trustworthy and responsible. (Applicant's Post-Hearing 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 failed 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.

Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Condition that could raise a security concern:

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;

- 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 or dishonesty, 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 five years of job searching and under-employment after leaving the military in 2004. During this period, he did not live beyond his means or spend lavishly. Since becoming employed in 2009, he has paid off or is currently making payments to resolve most of his delinquent debt set forth in the SOR. He has also hired a credit counselor to assist him in resolving his debts. 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).

Under Guideline E, the Applicant clearly did not deliberately conceal material information from the Government on his security clearance application concerning his delinquent debts. Admittedly, he was careless in answering the questions, but he was not deceitful. At the time he answered the questions, he did not have the information he needed to answer the questions correctly and he even consulted his supervisor about it. He credibly testified that he realizes his lack of judgment, and that he made a serious mistake that will never happen again. Accordingly, I find for the Applicant under Guideline E (Personal Conduct.)

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 and Personal Conduct. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 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.

Paragraph 2: For the Applicant.

- Subpara. 2.a.: 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