



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



In the matter of:

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)
) ISCR Case No. 10-00149
)
)

Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, 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) on August 3, 2009. (Government Exhibit 1.) On July 5, 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 27, 2011, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on August 26, 2011. A notice of hearing was issued on September 22, 2011, and the hearing was scheduled for October 18, 2011. At the hearing the Government presented eight exhibits, referred to as Government Exhibits 1 through 8, which were admitted without objection. The Applicant presented no exhibits. He testified on his own behalf. The record remained open until close of business on November 18, 2011, to allow the Applicant the opportunity to submit additional

documentation. The Applicant submitted no additional documentation. The official transcript (Tr.) was received on October 28, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 44 years old, has a child born out of wedlock, and is separated from his second wife. He has two associates degrees, one in Criminal Justice and the other in Television and Motion Media. He is employed with a defense contractor as an Electronic Technician and 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 admitted twenty of the twenty-six delinquent debts set forth in the SOR under this guideline. He admits all allegations except 1(b), 1(f), 1(h), 1(w) and 1(z). He did not answer 1(l), in his answer to the SOR, but admitted it at the hearing. (See Applicant's Answer to SOR and Tr. pp.69-70.) Credit Reports of the Applicant dated August 27, 2009; September 14, 2010; March 23, 2011; and, October 17, 2001, reflect that the Applicant was indebted to each of the creditors set forth in the SOR, in an amount totaling approximately \$45,000. (Government Exhibits 5, 6 7 and 8.)

The Applicant enlisted in the United States Army at the age of twenty-three. He served on active duty in the United States Army for thirteen years from September 1990 to October 2003, when he was honorably discharged. During his military career, he held a security clearance and was deployed and served overseas for four or five years. He also received numerous awards and decorations for his service. (Government Exhibit 4.) After leaving the military, he submitted a claim for disability and was initially declared 60% disabled. In September 2008, he was declared 100% disabled, and since then has been receiving a \$3,000 monthly benefit. (T. rp. 52.) In October 2004, he began working for his current employer and left in April 2006 to help his blind mother who lived out of state. He was unemployed or underemployed from May 2006 until he was rehired with his current employer in May 2009.

He explained that during and following his military career, he has gone through two failed marriages. He also had a son born out of wedlock. His first wife was not responsible with paying the bills. They filed for Chapter 7 Bankruptcy in December 1999 and discharged debts of \$30,000 to 40,000 in 2000. (Tr. p. 40.) Following the

bankruptcy they incurred more debt. Their divorce was final in 2001. In regard to his second wife, who has extreme spending habits, he separated from her in October 2010. The Applicant took out personal loans and three of his vehicles have been repossessed.

In 2006, his father passed away which caused the Applicant more financial stress. From April 2006 to April 2007, he moved out of state to help his blind mother file her disability claims and arranged for an assisted living facility to care for her. In March 2009, he returned to California for work. He is currently earning \$67,000 annually and receiving \$3,000 monthly tax free for his disability. He claims that eight or nine months into his current employment he started to address his delinquent debts. (Tr. p. 53.) The Applicant stated that his finances were such a hopeless situation and so overwhelming, he just did not want to deal with them. (Tr. p. 77.) He is a single father and does not have time. A month before the hearing, he contacted an attorney to discuss whether Bankruptcy or a debt resolution company would be recommended to assist him with his delinquent debts. (Tr. p. 29)

The following delinquent debts set forth in the SOR remain owing: 1(a). A debt to a creditor in the amount of \$18,000. (Tr. pp 55-56.) 1(b). A debt owed to a creditor in the amount of \$1,400. (Tr. p. 59.) 1(d). A debt owed to a creditor in the amount of \$65. (Tr. p. 62.) 1(e). A debt owed to a creditor in the amount of \$ 411. (Tr. p. 63.) 1(g). A debt owed to a creditor in the amount of \$1,500. (Tr. p. 65.) 1(h). A debt owed to a creditor in the amount of \$13,000. (Tr. pp. 66-67.) 1(i). A debt owed to a creditor in the amount of \$164. (Tr. p. 67-68.) 1(k). A debt owed to a creditor in the amount of \$ 350.00. (Tr. p. 69.) 1(l). A debt owed to a creditor in the amount of \$540. (Tr. p. 70.) 1(m). A debt owed to a creditor in the amount of \$74. (Tr. p 71.) 1(n). A debt owed to a creditor in the amount of \$13,875. (Tr. pp. 71-73) 1(o). A debt owed to a creditor in the amount of \$360 was being paid through involuntary garnishment but it was it stopped in 2008 and has not resumed. (Tr. p. 74.) 1(p). A debt owed to a creditor in the amount of \$174. (Tr. p. 75.) 1(q). A debt owed to a creditor in the amount of \$70. (Tr. pp. 75 and 78.) 1(r). A debt owed to a creditor in the amount of \$416. (Tr. p. 81.) 1(s). A debt to a creditor in the amount of \$1,169. (Tr. p. 82.) 1(t). A debt owed to a creditor in the amount of \$ 591.(Tr. p. 82.) 1(u). A debt owed to a creditor in the amount of \$ 201. (Tr. p. 84.) 1(v). A debt owed to a creditor in the amount of \$79. (Tr. p. 84.) 1(x). A debt owed to a creditor in the amount of \$ 4,263. (Tr. pp. 88-89.) 1(y). A debt owed to a creditor in the amount of \$146. (Tr. p. 89.)

The Applicant claims that he has satisfied a total of 38 debts, some of which are listed in the SOR and others that are not. (Tr. p. 57-58.) However, he has failed to provide any documentary evidence to support this testimony. He claims he has paid or resolved, 1(c). A debt owed to a creditor in the amount of \$266. (Tr. p. 61.) (1(j). A debt to a creditor in the amount of \$275.00 removed from his credit report. (Tr. pp. 68-69.).

The Government provided evidence of the fact that the following two debts were deleted from his credit report. 1(f). A judgment owed to a creditor in the amount of \$4,300 he paid through wage garnishment. (Government Exhibit 2 and Tr. p. 64.); and

1(w). A debt owed to a creditor in the amount of \$12,980 was deleted from his credit report. (Government Exhibit 2.)

Applicant's Personal Financial Statement dated September 9, 2010, reflects that after paying his regular monthly expenses, he has a net remainder of \$2,600 left at the end of the month. (Government Exhibit 2.) However, he noted that after he pays his current wife \$1,300 monthly in spousal support, and helps to support his three-step children from previous marriages, he does not have discretionary funds available to pay any delinquent bills. (Tr. p. 97.) He pays \$500 monthly for one of the step-children's rent while in college. He also helps supports his current wife's child from another marriage. He buys her clothes and glasses. In regard to his second wife with whom he is separated, he does not want to divorce her right away because she is in need of his medical benefits as she has a lot of medical concerns. (Tr. p. 94.)

The Applicant's current girlfriend is trying to help him prioritize his financial situation. (Tr. p. 98.)

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 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;

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 some circumstances largely beyond the Applicant's control, namely, a divorce from his first wife, his separation from his second wife, his father's death and mother's need for assistance, and periods of unemployment and underemployment, contributed to his financial problems. In addition, he has absorbed all of the debt from his second marriage. The Applicant has shown kindness and compassion toward others by paying for things for other people, but these decisions have not helped to resolve his financial situation. Despite his good intentions, he remains excessively indebted. To his benefit, he has recently contacted an attorney to help him determine how to proceed from here with his delinquent debt. He does not know yet whether Bankruptcy or a debt consolidation company would be best. At the present time, he is still in the process of finding out his options.

Under the particular circumstance of this case, the Applicant has not met his burden of proving that he is worthy of a security clearance. He has been working full time for his current employer since 2009, and for the past two years, between his salary and disability benefits, is earning in excess of \$100,000 annually. Many of the debts listed in the SOR are relatively small ones and the Applicant has made no attempt to resolve them. He claims that he has paid or resolved some debts, but he has provided no documentary evidence to show proof of any payment or resolution. Thus, it cannot be said that he has made a good-faith effort to resolve his past due indebtedness. He has not set up a payment plan or made any attempt to pay his debts. He remains excessively indebted. He has not shown that he is or has been reasonably, responsibly or prudently addressing his financial situation. He obviously does not understand the

importance of paying his bills on time. At this time, there is insufficient evidence of financial rehabilitation. The Applicant has not demonstrated that he can properly handle his financial affairs or that he is fiscally responsible. Assuming that he follows through with his bankruptcy and discharges his debts, and then shows that he does not acquire new debt that he is unable to pay, he may be eligible for a security clearance in the future. Considering all of the evidence at this time, 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. Although 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 circumstances*, applies, it is not controlling. He remains excessively indebted. Thus, he has not done enough to show that he is fiscally responsible. 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, including his military service. 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, a lack of candor, 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. 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.
Subpara. 1.m.: Against the Applicant.
Subpara. 1.n.: Against the Applicant.
Subpara. 1.o.: Against the Applicant.
Subpara. 1.p.: Against the Applicant.
Subpara. 1.q.: Against the Applicant.
Subpara. 1.r.: Against the Applicant.
Subpara. 1.s.: Against the Applicant.
Subpara. 1.t.: Against the Applicant.
Subpara. 1.u.: Against the Applicant.
Subpara. 1.v.: Against the Applicant.
Subpara. 1.w.: Against the Applicant.
Subpara. 1.x.: Against the Applicant.
Subpara. 1.y.: Against the Applicant.
Subpara. 1.z.: 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