



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 10-00398
)
)
Applicant for Security Clearance)

Appearances

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

June 12, 2012

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Questionnaire for Sensitive Positions with the signature page for the Electronic Questionnaires for Investigations Processing (e-QIP) on December 11, 2007. (Government Exhibit 1.) On November 3, 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.

Applicant answered the SOR in writing on December 11, 2011, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on February 13, 2012. A notice of hearing was issued on March 13, 2012, scheduling the hearing for April 19, 2012. The Government offered nine exhibits, referred to as Government Exhibits 1 through 9, which were received without objection. The Applicant offered ten exhibits, referred to as Applicant's Exhibits A through J, which were admitted into evidence without objection. He also testified on his

own behalf. The transcript of the hearing (Tr.) was received on May 3, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

The Applicant is 49 years old and in his third marriage. He has completed some college. He served in the United States Marine Corps from 1980 until 1993 when he was honorably discharged. He is employed with a defense contractor as a Field Service Representative 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 allegations 1(a), 1(b), 1(c), and 1(h) of the SOR. He denied allegations 1(d), 1(f), and 1(g) with some explanations. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated January 17, 2008; October 9, 2009; March 23, 2011; August 30, 2011; and April 12, 2012, reflect that the Applicant was at one time indebted to each of the creditors set forth in the SOR totaling in excess of \$14,000. (Government Exhibits 2, 3, 5, 6, and 9.)

The Applicant explained that he has experienced financial problems for various reasons since 2001. He testified that he has been married three times. His first wife passed away and he has had sole custody of their daughter until she went to college. He experienced no financial problems during his first marriage. In 2001, during his second marriage, his financial difficulties began. His second wife had medical bills that were financially unmanageable. They divorced in 2001, and the Applicant assumed the debt from the marriage. At that time he was also trying to maintain two residences, but was unable to afford the expense. He also discovered that delinquent debts were appearing on his credit report that he was not aware of. In 2005, he married his current wife. At that point, he began cleaning up his credit. She is from the Philippines, and he sponsored her and her children to immigrate to the United States. He and his wife also have a child together. The Applicant admits that he has frequently moved residences and did not provide forwarding addresses to his creditors. He now realizes the importance of informing them of his whereabouts so that he is aware of his credit report at all times.

In 2009, the Applicant started working for his current employer. His job transferred him to a permanent assignment overseas in 2010. Due to unexpected car

repairs he has was not able to pay off his debts as fast he had anticipated. Recently he has resolved each of the outstanding debts listed in the SOR. He does not anticipate incurring any new debt.

1(a). A delinquent debt owed to a creditor for a medical bill in the amount of \$484.00 was paid in full on April 13, 2012. (Applicant's Exhibit A.)

1(b). A delinquent debt owed to a creditor in the amount of \$250.00 has been paid in full. (Applicant's Exhibit B.)

1(c). A delinquent credit card debt in the amount of \$12,723.00 has been paid. (Applicant's Exhibit C.)

1(d). A delinquent debt owed to creditor in the amount of \$757.00 has been paid in full. (Applicant's Exhibit D.)

1(e). A delinquent debt owed to a creditor for in the amount of \$600.00 has been paid in full. (Applicant's Exhibit E.)

1(f). A delinquent debt owed to a creditor in the amount of \$170.00 has been paid in full. (Applicant's Exhibit F.)

1(g). A delinquent credit card debt in the amount of \$65.00 has been paid in full. (Applicant's Exhibit G.)

1(h). A delinquent debt owed to creditor in the amount of \$37.00 has been paid in full. (Tr. pp. 48 - 49.)

The Applicant is the sole supporter of the household that includes his wife and three daughters. He earns about \$60,000 annually. (Applicant's Exhibit I.) He currently rents a residence for himself in a foreign country, and also one for his family that lives in the United States. His personal financial statement indicates that at the end of the month he has \$286.50 left. (Applicant's Exhibit J.) He also receives \$727.00 from the military for being 40% disabled.

The Applicant's performance appraisal for 2011 reflects an overall rating of "High Performer." (Applicant's Exhibit H.)

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;

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 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, 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 financial difficulties began during his second marriage in 2001. Following their divorce, he assumed the debts from the marriage, but did not really know the extent of the debts. He moved around a lot and did not provide forwarding addresses to his creditors. Recently, he has focused on cleaning up his credit and paying his delinquent debts. He has paid off each of the delinquent debts set forth in the SOR.

Under the particular circumstance of this case, he has made a good-faith effort to resolve his past due indebtedness. He has set up a financial budget that he is following, and does not plan on incurring any new debt. He has acted reasonably, responsibly and prudently. He understands the importance of paying his bills on time and living within his means. He also knows the responsibilities that come along with holding a security clearance and that he must remain fiscally responsible at all times in the future. There is clear evidence of financial rehabilitation. The Applicant has demonstrated that he can properly handle his financial affairs and that he is fiscally responsible. 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 obligation*, 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 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 receipts for proof of payments, and his favorable performance evaluation. 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.h.:	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