



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-01348

Appearances

For Government: Jeff Nagel, Department Counsel
For Applicant: *Pro se*

March 18, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on June 15, 2009. (Government Exhibit 1.) On July 8, 2010, 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 August 5, 2010, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 3, 2010. A notice of hearing was issued on January 3, 2011, and the hearing was scheduled for January 21, 2011. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6 that were admitted without objection. The Applicant presented seven exhibits, referred to as Applicant's Exhibits A through G 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 February 1, 2011. The Applicant submitted twenty-seven pages, consisting of twenty-five Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits 1 through 25. The official transcript (Tr.) was received on January 28, 2011. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

The Applicant is 44 years old and married with two children. He is also a licensed foster parent. He is employed with a defense contractor as a Reliability Engineer 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 is a retired E-7, Chief Petty Officer, from the United States Navy. During his twenty years of military service, he held a security clearance, and on some occasions at the highest level, without incident.

The Applicant denies the debt set forth in the SOR, totaling \$119,000. Credit Reports of the Applicant dated June 25, 2009; June 8, 2010; September 21, 2010; and January 14, 2011; reflect that the Applicant was indebted to the creditor set forth in the SOR. (Government Exhibits 2, 4, 5 and 6.)

The Applicant explained that in 2004, he purchased a house for his primary residence for \$599,000, with monthly payments of over \$3,000. The first mortgage loan on the house was in the amount of \$479,200, and the second mortgage loan was for \$119,000. (Applicant's Exhibit A.) The second mortgage loan is the delinquent debt in question, set forth in the SOR. The Applicant explained that he used the second loan on the house to purchase the house. The Applicant lived in the house for about a year while on active duty, and made the payments in a timely fashion, until he retired from the Navy in September 2005. Then his financial problems began.

In September 2005, after retiring from the military, the Applicant's anticipated job prospects fell though, and he could not find suitable employment for some time. In addition, the interest rates on the adjustable mortgage loan increased in December 2005. He tried to negotiate with the bank to have the payments lowered or rolled over until he became employed, but he was not successful. He then put the house up for

sale but had no prospective buyers. In July 2006, the house was sold in foreclosure. The Applicant was only able to find part-time work until June 2006, when he started working full time and was then laid off in January 2009. Even during these periods, the Applicant paid his other bills on time. In March 2009, he was hired on by his current employer. He has continued to pay his other debts on time, is living within his means, and plans to continue to do so in the future. The Applicant testified that had he gotten a job when he had expected to, he would have been able to comfortably make the mortgage payments on the house, even with the mortgage loan adjustments, and prevented the foreclosure. (Tr. p. 41.) He states that he would never do anything to jeopardize the life and safety of our service members. (Tr. pp. 52-53.)

The Applicant submitted a letter from the bank that purchased the second mortgage loan in question that indicates that the foreclosure was completed and the account is closed with a zero balance. (Applicant's Exhibit E.) The letter further indicates that the bank has updated the information and sent it to each of the credit reporting agencies.

The Applicant submitted a copy of a 1099A that he received from the lender on the first mortgage loan. His tax accountant, who prepares the Applicant's income tax returns that he files on an annual and timely basis, indicated to the Applicant that he did not owe any money to the IRS for the forgiveness of the loan since the value of the property was more than the amount he owed on the loan. (Tr. p. 34-35).

Excerpts from the Applicant's Navy service records reflect numerous awards, achievement medals, letters of appreciation and commendations for excellent performance and a job well done. (Applicant's Post-Hearing Exhibits 1 through 25.) The Applicant testified that he has over twenty Admiral's letters. (Tr. p. 50.)

A letter from the Vice President of the company with whom the Applicant works, his direct supervisor, and his immediate supervisor, during the period from March 27, 2009, to the present indicates that Applicant's unique skills, abilities, experiences and knowledge have greatly enhanced the fleet to which he is assigned. He is said to perform his duties in an exemplary manner. He has never been tardy nor absent from work and has no disciplinary issues. He is trusted with the company credit card and has never misused it. He is recommended for a position of trust. (Applicant's Exhibit G.)

Letters of recommendation from the Applicant's team leader and project manager who have closely observed the Applicant's performance indicate that he is responsible, has no discipline issues, is open, honest and has the highest integrity. (Applicant's Exhibit D.)

A creditor with whom the Applicant has an open account indicates that the Applicant is current and in good standing. (Applicant's Exhibit C.) The Applicant's previous landlord from September 15, 2008, through March 4, 2010, indicates that he pays his rent of \$2,100 on time and in full each month, and that he left the property in better condition than when he took possession. (Applicant's Exhibit D.)

The Applicant and his wife are licensed foster parents for Native American children. They have cared for over fifteen foster children. They have taken many hours of foster parent training and have maintained their required background checks with the FBI, DOJ and Child Abuse Index Check, and have been cleared every instance. (Applicant's Exhibit F.)

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 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 the Applicant's control, namely, his difficulties in finding suitable employment after retiring from the military, caused his financial difficulties. This was completely unforeseeable and an isolated situation. Since becoming employed, and even during his periods of unemployment and under-employment, the Applicant acted responsibly and with integrity under the circumstances. In regard to the foreclosed property, the Applicant tried to negotiate with the bank, and then tried to sell the property to prevent the foreclosure, but was unsuccessful. According to the law of the state in which the property is located, he no longer has any liability or any deficiency or action by the holder of the first mortgage, and he has settled his liability to the lender on the second mortgage. He did the best he could under the circumstances. He no longer owns real property and is current with all of his other financial obligations. He has done as much as is humanly possible to resolve his financial problems.

Under the particular circumstance of this case, the Applicant has made a good faith effort to resolve his past due indebtedness. He has a stellar record demonstrating that he has always paid his bills on time. But for his foreclosure, his record is unblemished. 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. 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. 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 favorable recommendations, dedicated military career, work history and foster parent credentials. 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.

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

