



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 10-01974
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

November 10, 2010

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on September 22, 2009. (Government Exhibit 1.) On May 28, 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 June 13, 2010, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on July 12, 2010. A notice of hearing was issued on July 13, 2010, and the hearing was scheduled for August 26, 2010. At the hearing the Government presented nine exhibits, referred to as Government Exhibits 1 through 9. The Applicant presented nine exhibits, referred to as Applicant's Exhibits A through I. He also testified on his own behalf. The record remained open until close of business on September 26, 2010, to allow the Applicant the opportunity to submit additional documentation. The

Applicant submitted one Post-Hearing Exhibit which was admitted without objection, as Applicant's Post-Hearing Exhibit. The official transcript (Tr.) was received on September 13, 2010. 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 65 years old and unmarried. He has a Bachelor's Degree in Management. He is employed with a defense contractor as a Data 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.

From November 1965 to February 1969, the Applicant served honorably in the United States Air Force and held a Top Secret security clearance. In 1969, when he left the service, he started working for a large communications company and retired after twenty years. In 1989, he purchased a house and thought that having his own business would provide more income. He and his wife were divorcing, which required that he give up half of his assets and earnings. In 1990, he started thinking about starting his own construction business, since he enjoyed fixing up single-family houses. He passed the state contractors exam, and received his General Contractors license. He performed small jobs until 1993. In 1994, after the earthquake in California, to accommodate the demand for his services, the Applicant decided to jump in and start a full fledged contracting business. He hired a crew of ten people, purchased five trucks on credit, and proceeded to send crews out to repair people's homes. That year he grossed a half million dollars, but did not see the money as his profits were churned back into the business activity. (Tr. p. 35.)

In 1996, the state experienced the nation's worse recession that hit the Applicant's business hard. He had to lay off the crew and return the trucks to the dealers. By 1997, he had accrued a lot of debt and owed the Internal Revenue Service (IRS) the amount of \$90,000 in back taxes. The Applicant consulted an attorney and was advised to file Bankruptcy that would not stop, but would slow down, the IRS. He filed for Chapter 7 Bankruptcy in 1997. (Government Exhibit 4.) In the following years, the Applicant settled with the IRS and resolved the debt for \$10,000 that he took out of his retirement account.

In 1996, the Applicant started working for his current employer, a defense contractor. He recovered from bankruptcy and was solvent for several years. In 2004,

he left the company, as the construction business was picking back up and he wanted to spend more time with his elderly mother who could no longer live alone, and had moved in with him. In 2006, he rehired with the company and then left a year later as the construction business again picked up.

In 2008, the Applicant took on a major house renovation. Two months into the remodel, he realized that he had significantly underbid the job, as it required a complete tear down with retrofitted new foundations, and the costs were accelerating far beyond his control. (Tr. p. 40.) He discussed a revised estimate with the home owners, but they had no more money and wanted to enforce the contract. The Applicant began using own personal credit accounts to get the home livable for the homeowners. The homeowners moved into their house by Thanksgiving day 2007. In lieu of being sued by the homeowner for compensation, the parties reached a settlement agreement of \$18,000 in cash and a boat worth \$45,000 that the Applicant had.(Tr. p. 41-42.) The Applicant satisfied the terms of the agreement. (Applicant's Exhibit G.)

Credit Reports of the Applicant dated September 29, 2009; March 19, 2010; and June 22, 2010, reflect that the Applicant was indebted to each of the creditors set forth in the SOR, in an amount totaling approximately of \$147,000. (Tr. p. 44 and Government Exhibits 6, 7 and 8). The following debts are outstanding: Allegations 1(a). A debt owed to a creditor in the amount of \$2,580.00; 1(b). A debt owed to a creditor in the amount of \$16,647.00; 1(c). A debt owed to a creditor in the amount of \$5,420.00; 1(d). A debt owed to a creditor in the amount of \$10,716.0; 1(e). A debt owed to a creditor in the amount of \$18,363.00; 1(f). A debt owed to a creditor in the amount of \$23,463.00; 1(g). A debt owed to a creditor in the amount of \$21,514.00, and 1(h). A debt owed to a creditor in the amount of \$2,031.00. The Applicant notified his creditors about his poor business situation and his inability to pay his debts. (Applicant's Exhibit F.)

For the rest of 2008, the Applicant's construction business slowed down, due to the national recession. Once again, the Applicant contacted his employer for a job, and was rehired. This time, he was part time, on call. At this point, the debt that the Applicant had accrued was significant and he could not afford to pay. For assistance, he contacted a consumer credit counselor but was told they could not help him. He contacted his attorney and was advised to file Bankruptcy. In March 2010, he filed for Chapter 7 bankruptcy. (Applicant's Exhibit A.) Each of the eleven delinquent debts set forth in the SOR were listed in his bankruptcy petition. (Tr. pp. 43-44.) The debts were discharged on September 9, 2010. (Applicant's Post-Hearing Exhibit.) In June 2009, the Applicant was successful in negotiating a lower mortgage payment.

The Applicant states that he has learned from his past and will no longer fall into any type of business financial problems again. He has discontinued his construction business, closed all related bank accounts, discontinued the business telephone, sold and/or donated the construction tools and equipment, and deactivated his state contractors license. (Applicant's Exhibit C.) He plans to maintain his status as an employee.

The Applicant has received numerous awards and Certificates of Achievement for work related accomplishments. (Applicant's Exhibit D.)

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;

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;

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, overextending himself in the construction business coupled with the recession and the downturn in the construction business, a divorce, and various periods of transitioning between his own business and his job with the defense contractor, caused his financial difficulties. Even when the Applicant had under bid the major renovation and lost considerable monies, he was advised by counsel to abandon the project and wait for a law suit. Then, if a judgment followed, file bankruptcy. The Applicant chose not to take that route, and demonstrated integrity and responsibility by finishing the project the best he could under the circumstances. The fact that he has consistently been rehired by his employer, now three separate times, shows that he is a most valuable and well-liked employee. The fact that the Applicant had to file for bankruptcy simply shows that he has tried to resolve his serious financial indebtedness from his business that he could not afford to pay on his monthly salary. He has done as much as is humanly possible to resolve his financial problems. The Applicant has learned a harsh lesson from starting a business without sufficient experience to foresee the drought.

Under the particular circumstance of this case, the Applicant has made a good faith effort to resolve his past due indebtedness. He has filed for bankruptcy and has discharged each of the debts set forth in the SOR. He does not plan on incurring any new debt. 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 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 military and work history. 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.g.:	For the Applicant.
Subpara. 1.h.:	For the Applicant.
Subpara. 1.i.:	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