



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



In the matter of:)	
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)	ISCR Case No. 10-01976
)	
Applicant for Security Clearance)	

Appearances

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

April 13, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on December 21, 2009, and April 9, 2010. (Government Exhibits 2 and 3.) On July 29, 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 31, 2010, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on February 4, 2011. A notice of hearing was issued on February 11, 2011, and the hearing was scheduled for March 2, 2011. At the hearing the Government presented seven exhibits, referred to as Government Exhibits 1 through 7, which were admitted without objection. 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 March 7, 2011, to allow the Applicant the

opportunity to submit additional documentation. The Applicant submitted one Post-Hearing Exhibit, which was admitted without objection, and is referred to as Applicant's Post-Hearing Exhibit A. The official transcript (Tr.) was received on March 10, 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 55 years old and married. He has a Bachelor's of Science Degree in Chemistry, Cum Laude. He is employed with a defense contractor as a Quality 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.

Until the end of 2007, the Applicant and his wife were both gainfully employed and lived on a joint annual income of about \$120,000. (Tr. p. 38.) Their credit was good and they paid their bills. In January 2008, as a result of being sexually harassed on her job, the Applicant's wife became incapacitated, unable to work, and was forced to quit her job. This caused a 40% drop in their household income. (Tr. p. 13.) In February 2008, she hired an attorney and filed a workers compensation claim against her previous employer. (Applicant's Exhibit I.) She expected a monetary settlement amount that could be used to help pay their bills, but the process took longer than expected. (Applicant's Exhibit F.) In the meantime, the Applicant used credit cards to pay for necessary expenses and debt accumulated that he could not afford to pay on his salary alone. The Applicant's wife also suffered back problems that required two surgeries, one in 2009, the other in 2010. The Applicant decided to file bankruptcy to resolve his debts. On November 30, 2010, the Applicant filed for Chapter 7 Bankruptcy and each of the debts listed in the SOR were included. (Applicant's Exhibits G, B and Applicant's Post-Hearing Exhibit A.) The bankruptcy is pending discharge. (Tr. p. 47.) The Applicant also completed the required bankruptcy financial counseling. (Tr. p. 51.)

Credit Reports of the Applicant dated August 21, 2003; December 29, 2009; July 9, 2010; and October 19, 2010, reflect that the Applicant was indebted to each of the creditors set forth in the SOR, in an amount totaling approximately \$130,000. (Government Exhibits 3, 4, 5 and 6.)

Applicant's current financial statement indicates that he has accumulated no new debt since the Bankruptcy filing and, after paying his monthly expenses, has a net remainder of over \$1,900 monthly in discretionary funds. (Applicant's Exhibit H.)

A letter of recommendation from the company site director on behalf of the Applicant describes the Applicant as an employee who provides excellent service, one who continually demonstrates his capability and serves with honor and integrity and one who goes beyond expectations. He is said to be a critical, highly valued member of the organization. (Applicant's Exhibit C.)

The Applicant's performance appraisals for the periods from January 1, 2009, through December 31, 2009, and January 1, 2010, through December 2010, are favorable and reflect overall assessments of "high contributor". (Applicant's Exhibit D.)

The Applicant received an award at work for Quality and Mission Success Excellence. (Applicant's Exhibit E.)

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, his wife's problems on the job that caused her incapacitation, inability to work, unexpected loss of employment, and then her two back surgeries, caused his financial difficulties. The Applicant was not accustomed to living on one salary and instead of cutting back on their expenses, he used credit cards to pay the bills with the idea that his wife's workers compensation settlement claim would cover the debt. Instead, the process took too long and the Applicant realized he must handle his financial affairs.

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 each of the debts set forth in the SOR are in the process of being discharged. 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 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.

Subpara. 1.j.: For the Applicant.
Subpara. 1.k.: For the Applicant.
Subpara. 1.l.: For the Applicant
Subpara. 1.m.: 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