



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-02886

Appearances

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

January 10, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on October 29, 2009. (Government Exhibit 1.) On September 1, 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 September 18, 2010, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on October 22, 2010. A notice of hearing was issued on October 29, 2010, and the hearing was scheduled for November 16, 2010. At the hearing the Government presented seven exhibits, referred to as Government Exhibits 1 through 7. The Applicant presented no exhibits at the hearing. He testified on his own behalf. The record remained open until close of business on December 17, 2010, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted

twenty-seven Post-Hearing Exhibits, consisting of seventy-one pages, which were admitted without objection, as Applicant's Post-Hearing Exhibits A through W that include exhibits CC, DD, MM and OO. The official transcript (Tr.) was received on November 30, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 57 years old, and married with one child. He has a high school diploma and has completed three years of college. He is employed as a Productions Scheduling Planner by a defense contractor 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 comes from a military family. His father was a highly decorated Army World War II and Korean War veteran, and his brother a highly decorated Army veteran who served in Vietnam. (Applicant's Post-Hearing Exhibit E.)

From 1997 to 2005, the Applicant was employed with his brother's company and by 2005, earned approximately \$88,000 annually, and became accustomed to living on that income. In 2005, the Applicant was laid off from his job, as his brother's company went out of business due to the poor economy. The Applicant found the job market dismal. He got another job but was laid off a couple months later. He was out of work for about three months before he started working again for about a ten months before his contract ended in December 2008. With each job he got, he took a pay reduction. He continued to pay his bills as best he could with his reduced salary and used his savings account that contained about \$35,000, until it was depleted about a year ago. (Applicant's Post-Hearing Exhibit M.) He eventually stopped making his mortgage payments and could no longer pay his other delinquent bills. In April, 2009, he was hired by his current employer where he earns \$53,000 annually. At that time, the Applicant contacted his creditors about his financial situation and informed them that his plan was to file bankruptcy.

The Applicant admits to each of the debts set forth in the SOR, except 1(a), a debt in the amount of \$23.00 and 1(n), a debt in the amount of \$430.00. He disputes these two debts and believes the creditors to be mistaken. Credit Reports of the Applicant dated December 10, 2009; April 30, 2010; July 7, 2010; and October 20, 2010; reflect that the Applicant is indebted to each of the creditors set forth in the SOR,

for credit card debt, in an amount totaling almost \$100,000, not counting his mortgage arrearage. (Government Exhibits 3, 4, 5, 6 and 7.)

The following delinquent debts are listed in the SOR: Allegation 1(b). A debt owed to a creditor in the amount of \$8,503.00 remains outstanding. Allegation 1(c). A debt owed to a creditor in the amount of \$2,973.00 remains outstanding. Allegation 1(d). A debt owed to a creditor in the amount of \$5,233.00 remains outstanding. Allegation 1(e). A debt owed to a creditor in the amount of \$2,640.00 remains outstanding. Allegation 1(f). A debt owed to a creditor in the amount of \$1,640.00 remains outstanding. Allegation 1(g). A debt owed to a creditor in the amount of \$1,287.00 remains outstanding. Allegation 1(h). A debt owed to a creditor in the amount of \$326.00 remains outstanding. Allegation 1(i). A debt owed to a creditor in the amount of \$2,227.00 remains outstanding. Allegation 1(j). A debt owed to a creditor in the amount of \$3,296.00 remains outstanding. Allegation 1(k). A debt owed to a creditor in the amount of \$33,353.00 remains outstanding. Allegation 1(l). A debt owed to a creditor in the amount of \$23,827.00 remains outstanding. Allegation 1(m). A debt owed to a creditor in the amount of \$5,216.00 remains outstanding. Allegation 1(o). A debt owed to a creditor in the amount of \$322.00 remains outstanding. The Applicant has not provided any documentary evidence to support the fact that he has paid off, or starting making payments toward any of the debts set forth in the SOR.

Three days before the hearing, the Applicant hired an attorney who plans to file for Chapter 13 Bankruptcy relief on his behalf. (Tr. p. 55 and Applicant's Post-Hearing Exhibits A, B and C.) The Applicant is still in the process of paying the attorney fees before the bankruptcy petition will be filed. He projects that it will take five or six months before he is able to file the bankruptcy petition. (Tr. p. 50.) In August 2010, the Applicant received results of the loan modification on his home and the payments were reduced by about \$500.00 monthly. (Tr. p. 38 and Applicant's Post-Hearing Exhibits D and DD.)

Numerous letters of recommendation from his professional associates, family and friends who know the Applicant well, including his direct Manager and supervisor, sister-in-law and brothers attest to the Applicant's overall outstanding character. The Applicant is described as a natural leader, who is a hard working, motivated, highly ethical and a dedicated employee. He is considered a valuable asset to his company, and a team player, who is reliable, honest and trustworthy. He is highly recommended for a position of trust. (Applicant's Post-Hearing Exhibits N, O, OO, P, Q, R, S, T, U, V and W.)

The Applicant's performance appraisal from 2009, reflects ratings of either "exceeds performance requirements" or "outstanding" in every category, except one where he "meets performance requirements." (Applicant's Post-Hearing Exhibit F.) The Applicant received a promotion and pay raise in April 2010. (Applicant's Post-Hearing Exhibit G.)

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:

None.

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 predicted 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 due to periods of unemployment and underemployment the Applicant became excessively indebted. Adjusting from living on \$88,000 annually in 2005, to \$53,000 now, has obviously been difficult. He has tried to pay his bills but has not been able to get a good handle on the matter. To his credit, he has decided to file for bankruptcy to resolve his debts. He has hired an attorney and plans to file for Chapter 13 Bankruptcy. He is now in the process of starting to resolve his delinquent debts. Given the extent of his indebtedness, and the fact that he has only started the process, he presently does not qualify for access to classified information.

Under the particular circumstances of this case, the Applicant's delinquent debts remain owing and have not yet been addressed. His plan to file bankruptcy has not been completed, and he has not started a payment plan with his creditors. There is insufficient evidence of financial rehabilitation at this time. The Applicant has not clearly demonstrated that he can properly handle his financial affairs or that he is fiscally responsible. Considering all of the evidence, 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. None of the mitigating conditions are applicable. 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. 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, 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. However, 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.

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