



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-02989

Appearances

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

June 17, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on October 15, 2009. (Government Exhibit 1.) On February 23, 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.

The Applicant responded to the SOR on March 4, 2011, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on March 21, 2011. A notice of hearing was issued on March 29, 2011, and the hearing was scheduled for April 19, 2011. At the hearing the Government presented seven exhibits, referred to as Government Exhibits 1 through 7 that were admitted without objection. The Applicant presented two exhibits, referred to as Applicant's Exhibits A and B 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 April 26, 2011. The Applicant submitted two Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A and B that were admitted without objection. The official transcript (Tr.) was received on May 2, 2011. Based upon a review of the, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

The Applicant is 37 years old and single. He has a Bachelor's Degree in Electronics and Technical Management. He is being recruited for a position with a defense contractor as an Intelligence Analyst 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 admits each of the delinquent debts set forth in the SOR, totaling \$45,000. Credit Reports of the Applicant dated November 18, 2009; November 8, 2010; February 3, 2011; and April 13, 2011, reflect that the Applicant was indebted to the creditors set forth in the SOR. (Government Exhibits 2, 3, 4 and 7.)

The Applicant graduated from high school in 1993. That same year, he joined the United States Marines, and served for four years, until he was honorably discharged in 1997. (Applicant's Exhibit A.) The Applicant then entered the civilian work force. He worked two jobs while attending college on the G.I. bill. The Applicant then worked in the commercial construction business. For the past four years, he has experienced periods of unemployment or underemployment that caused his financial problems. In June 2007, he was laid off as a result of the drastic downturn in the economy and its devastating impact on the construction business, and was unemployed until January 2008. He then worked for about eight or nine months, and was laid off again. He did not work again until May or June 2009. He worked for three months, and was laid off again. He worked from January 2010 until April 2010, and was laid off again. (Tr. p. 37.) During this period, the Applicant became homeless and was forced to use credit cards for food, gas, car repairs and basic necessities. As a result, he accumulated the delinquent debt set forth in the SOR.

The following delinquent debts remain outstanding; A delinquent debt owed to a creditor in the amount of \$5,112.00 remains owing. (Tr. pp. 37-38.) A delinquent debt owed to a creditor in the amount of \$50.00 remains owing. (Tr. p. 38.) A delinquent debt owed to a creditor in the amount of \$6,845.00 remains owing. (Tr. p. 39-40.) A

delinquent debt owed to a creditor in the amount of \$4,679.00 remains owing. (Tr. p. 40.) A delinquent debt owed to a creditor in the amount of \$7,356.00 remains owing. (Tr. p. 41.) A delinquent debt owed to a creditor in the amount of \$8,711.00 remains owing. (Tr. p. 41) A delinquent debt owed to a creditor in the amount of \$2,375.00 remains owing. (Tr. pp. 41-42.) A delinquent debt owed to a creditor in the amount of \$9,488.00 remains owing. (Tr. p. 42.) A delinquent debt owed to a creditor in the amount of \$752.00 remains owing. (Tr. p. 43.) A delinquent debt owed to a creditor in the amount of \$514.00 remains owing. (See Applicant's Answer to SOR.) A delinquent debt owed to a creditor in the amount of \$1,411.00 remains owing. (Tr. p. 48). A delinquent debt owed to a creditor in the amount of \$72.00 remains owing. (Tr. p. 48.)

The Applicant testified that a delinquent debt owed to a creditor in the amount of \$118.00 has been paid. (Tr. p. 38). He also states that he settled a \$15,000 debt owed to a creditor for \$13,000. (Tr. pp. 45-47). A debt owed to a creditor in the amount of \$1,360.00 has been paid. (Tr. p. 48-49.) He does not have the receipts because he moved so frequently. He currently lives in a room he rents.

Since April 2010, the Applicant has been unemployed and has not had the money to pay his delinquent debts. (Tr. p. 40.) He has recently been recruited by a defense contractor for employment that will pay approximately \$130,000 to \$160,000 annually. (Tr. p. 51.) He promises and credibly states that he plans to pay all of his debts within the first six months of his employment. (Tr. p. 51.)

Excerpts from the Applicant's Marine Corps service records reflect a number of awards and commendations including a Meritorious Promotion, dated March 2, 1996; a Certificate of Good Conduct, dated October 19, 1993; and several Meritorious Masts, one dated January 1, 1997; two on September 1, 1995; and a Certificate of Course Completion for corporals course, dated August 6, 1996. (Applicant's Post-Hearing Exhibit A.)

A letter of recommendation from the Applicant's previous supervisor dated July 31, 2009, attests to the Applicant's focus, organization and analytical skills and efficiency. He was said to be enthusiastic, with great technical knowledge and a high energy level. He was inspiring and infectious. As soon as the Applicant was hired, he earned immediate respect from his colleagues. (Applicant's Post-Hearing Exhibit B.)

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.(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, the economic downturn that drastically effected the construction business and forced him out of work, caused his financial difficulties. This was completely unforeseeable and an isolated situation. The Applicant now has the opportunity to become employed and pay off his delinquent debts. Even during his periods of unemployment and under-employment, the Applicant acted responsibly and with integrity under the circumstances. He did not spend lavishly or extravagantly. He used his credit cards strictly for necessities. Under the circumstances, he has done as much as is humanly possible to resolve his financial problems.

In this case, the Applicant can be said to have made a good faith effort to resolve his past due indebtedness. Until his job lay off, he had a good financial record, demonstrating that he had always paid his bills on time. He is sincere, honest and credible. 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. Although his bills remain outstanding, once he is employed and earning a salary, he plans to pay them off within six months. He has assumed responsibility for his debts and understands that he must resolve them as soon as possible. In the event that he does not pay his delinquent debts in a timely fashion, his security clearance will be in jeopardy. At this time, given these circumstances, 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*; 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 recommendation, dedicated military career 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.
Subpara. 1.j.:	For the Applicant.
Subpara. 1.k.:	For the Applicant.
Subpara. 1.l.:	For the Applicant.
Subpara. 1.m.:	For the Applicant.
Subpara. 1.n.:	For the Applicant.
Subpara. 1.o.:	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