



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 10-03020
)
)
Applicant for Security Clearance)

Appearances

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

March 23, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on January 18, 2010. (Government Exhibit 1.) On August 17, 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.

Applicant acknowledged receipt of the SOR on August 23, 2010. He answered the SOR in writing on September 4, 2010, and requested a hearing before a DOHA Administrative Judge. The case was assigned to another Administrative Judge on November 3, 2010, and reassigned to the undersigned on November 4, 2010. A notice of hearing was issued on January 3, 2011, and the matter was scheduled for hearing on January 21, 2011. At the hearing, the Government presented six exhibits, referred to as Government Exhibits 1 through 6, which were received without objection. The Applicant presented four exhibits, referred to as Applicant's Exhibits A through D, which were received without objection. The Applicant also testified on his own behalf. The record remained open until close of business on February 25, 2011, to allow the Applicant to

submit additional documentation. The Applicant submitted one exhibit referred to as Applicant's Post-Hearing Exhibit A that was admitted without objection. DOHA received the transcript of the hearing (Tr.) on February 3, 2011. 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 61 years old. He is married and has a Bachelor's of Science Degree in Electrical Engineering and some graduate school. He is employed by a defense contractor as a Systems Test Engineer and is seeking to obtain a security clearance in connection with his 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 denies each of the eight delinquent debts set forth in the SOR. He admits only allegation 1(a), that alleges a 1984 Bankruptcy. The eight delinquent debts total in excess of \$20,000. Credit Reports of the Applicant dated January 27, 2010; October 13, 2010; and January 14, 2011, reflect that each of the delinquent debts remain owing. (Government Exhibits 4, 5 and 6). Although the Applicant admits that he originally owed a certain amount to each creditor in the SOR, he disputes the amount the creditors state he owes.

The Applicant has worked for the defense industry and held a security clearance for thirty-three years without a security violation. Over the past of thirty-three years, he has experienced several lay-off periods that have negatively impacted his financial situation. Following a lay-off period, he later became re-employed and each time increased his salary. In 1984, he was earning \$30,000 a year, and since 2008, he has been earning \$118,000 annually. (Tr. pp. 61 and 63.)

In 1984, while employed with another defense contractor, and earning \$30,000 yearly, he was laid-off for about five months and fell behind on his bills. Upon the advice of his attorney, in June 1985, he filed for Chapter 7 Bankruptcy and discharged approximately \$40,000 in mainly credit card debt in November 1985. In retrospect, the Applicant is disappointed with the attorney's advice; and believes that he should not have filed for bankruptcy because before he did, he had good credit. (Tr. p. 51.) Following this bankruptcy, the Applicant was debt free.

In 2004, the Applicant experienced another four or five month period of unemployment, and accumulated the delinquent debt set forth in the SOR. During this period, he depleted his retirement money of \$35,000 to live on, and again fell into credit card debt. (Tr. p. 55.) In January 2007, he contacted each of his delinquent creditors by letter. Since the creditors had closed his accounts that had negatively affected his credit rating, he informed them of his concern, that their business relationship had been severed, that he was disputing the amount of the debt owed, and that the creditor should repair his credit. (Applicant's Exhibit B.) The Applicant testified that he received no response from the creditors. The Applicant states that in the beginning, he was making payments, but with his other expenses such as rent and COBRA he ran out of money. (Tr. p. 34.) There is no evidence in the record of any payments made.

The following debts became delinquent and owing. Most of the debt is delinquent credit card debt. (Tr. p. 31.) A delinquent debt owed to a creditor in the amount of \$3,476.00 remains owing. Applicant claims that the original debt was \$500.00, that the statute of limitations has run and the debt is no longer enforceable, and it is no longer reflected on his credit report. (Applicant's Answer to SOR.) A delinquent debt owed to a creditor in the amount of \$2,744.00 remains owing. Applicant claims that the original debt was \$400.00, that the statute of limitations has run, and the debt is no longer enforceable. (Applicant's Answer to SOR.) A delinquent debt owed to a creditor in the amount of \$2,101.00 remains owing. Applicant claims that the statute of limitations has run, the debt is no longer enforceable, and it is no longer reflected on his credit report. (Applicant's Answer to SOR.) A delinquent debt owed to a creditor in the amount of \$1,972.00 remains owing. Applicant claims that the statute of limitations has run, the debt is no longer enforceable, and it is no longer reflected on his credit report. (Applicant's Answer to SOR.) A delinquent debt owed to a creditor in the amount of \$4,044.00 remains owing. Applicant claims that the original debt was \$1000, that the statute of limitations has run, the debt is no longer enforceable, and it is no longer reflected on his credit report. (Applicant's Answer to SOR.) A delinquent debt owed to a creditor in the amount of \$2,088.00 remains owing. Applicant claims that the original debt was \$670.00, that the statute of limitations has run, and the debt is no longer enforceable. (Applicant's Answer to SOR.) A delinquent debt owed to a creditor in the amount of \$3,309.00 remains owing. Applicant claims that the statute of limitations has run, the debt is no longer enforceable, and it is no longer reflected on his credit report. (Applicant's Answer to SOR.) A delinquent debt owed to a creditor in the amount of \$1,868.00 remains owing. Applicant claims that the statute of limitations has run, the debt is no longer enforceable, and it is no longer reflected on his credit report. (Applicant's Answer to SOR.)

The Applicant indicates now that he has no intent to pay the creditors listed in the SOR. He basically asserts the argument that the debts are old and he is protected by the Fair Debt Collections Act and the Statute of Limitations. (Applicant's Exhibit C.) He does not believe that he is legally obligated to pay the debts and plans to have no further contact with the creditors. His logic is that since the creditors have increased the amount of the original debt that he charged, which now includes possible interest, penalties and or late fees etc. that he does not believe he owes, if he contacts the

creditor he will be validating the debt and owe the entire debt. (Tr. pp. 32-35, 40 and Government 2 and Applicant's Post-Hearing Exhibit A.)

The Applicant states that he is current with all of his monthly expenses and does not and has never lived beyond his means. At the end of the month he has between \$700.00 and \$1,000 left over for emergencies. (Tr. p. 61.) He has about \$25,000 in a 401(K) plan and a small pension. (Tr. pp. 65-66.) He plans to retire in five years.

Applicant's performance appraisals from the periods January 2005 through December 2005, January 2006 through December 2006, January 2007 through December 2007 and January 2008 through December 2008 all reflect that he either meets performance requirements, exceeds performance requirements or is outstanding. (Applicant's Exhibit A.)

The Applicant has received several of awards and certificates from his employers over the years for outstanding work performance. (Applicant's Exhibit A.)

A letter of appreciation was received from the Applicant's Project Manager in 2001, for his time hard work and a job well done at work. (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:

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 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 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.

Given the fact that the Applicant's bankruptcy was in June 1985, over twenty-five years ago, I do not find it to be of security significance and find for the Applicant under allegation 1(a).

The remaining evidence shows that the Applicant's financial problems may have started as a result of a job lay-off, but they certainly have not continued due to lack of financial ability. Since 2008, the Applicant has been employed full time and has been earning well over six figures annually. Based upon his testimony, he has sufficient monies left over after his monthly expenses that he could use to pay his delinquent debts if he wanted to. Instead, he has chosen not to pay them. He has researched the Fair Debt Collection Act and the Statute of Limitation and is of the opinion that he has no legal responsibility to pay the debts. Most of them are old debts and have now fallen off of his credit report. He believes that by attempting to resolve and pay these old debts, he would suffer financial duress and serve no purpose. However, based upon the fact that the debts are the Applicant's and they all remain owing, he has not demonstrated that he is trustworthy.

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.

The Applicant has not shown sufficient good judgment since his most recent job layoff placed him in his current financial situation. In this matter, the Fair Debt Collections Act and the Statute of Limitations may apply. However, under the circumstances, he has not made a good faith effort to resolve his indebtedness, and there is insufficient evidence of financial rehabilitation. The Applicant has ignored his debts and not demonstrated that he can properly handle his financial affairs. 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 under all of the guidelines viewed as a whole, support a whole-person assessment of poor judgement, untrustworthiness, unreliability, a 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 come close to mitigating the negative effects of his financial indebtedness and its impact on his ability to safeguard classified information. On balance, it is concluded that the Applicant has failed to 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.:	For 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.

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