



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 10-03187
)
)
Applicant for Security Clearance)

Appearances

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

February 23, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on December 3, 2009. (Government Exhibit 1.) On September 14, 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 November 16, 2010, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on December 14, 2010. A notice of hearing was issued on January 3, 2011, and the hearing was scheduled for January 19, 2011. At the hearing the Government presented eight exhibits, referred to as Government Exhibits 1 through 8. The Applicant called two witnesses and presented eleven exhibits, referred to as Applicant's Exhibits A through K. He also testified on his own behalf. The record remained open until close of business on January 29, 2011, to allow the Applicant to

submit additional documentation. The Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A. The official transcript (Tr.) was received on January 25, 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 48 years old and married with children. He is employed with a defense contractor as an Instructor 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 served on active duty in the United States Navy for twenty-four years before retiring in 2006. (Tr. p. 24.) He had three combat tours, 2 in Iran/Iraq, and one in Desert Shield/Desert Storm. In November 2009, he started working for his current employer.

After retiring from the military in early 2006, the Applicant and his family moved out of state. The Applicant invested in an apartment building that was at the time fully rented and generated income. He also bought a home for the family. With the downturn in the economy, the tenants stopped paying rent and other units in the apartment building became vacant for months. The Applicant used his credit card to cover the mortgage and repair costs of the property. Unable to keep up with the payments, the property eventually went into foreclosure and was sold at auction. By trying to save his apartment building, he fell behind on his home mortgage. The Applicant tried to refinance his home loan but the mortgage company refused. The house was sold at short sale in 2010, and the second mortgage on his home was forgiven in 2009. (Tr. pp. 41-42.)

Credit Reports of the Applicant dated March 27, 2004; December 31, 2009; July 9, 2010; December 10, 2010; and January 14, 2010, reflect that the Applicant was indebted to each of the creditors set forth in the SOR, in an amount totaling approximately \$135,000 in bad debt. (Government Exhibits 4, 5, 6, 7 and 8.)

Since starting his current employment, the Applicant has been working to resolve his delinquent debts: 1(a) A debt to a bank in the amount of \$11,001.00. The Applicant has set up a payment plan with the creditor that he is following and is paying \$100.00 monthly to resolve the debt. (Applicant's Exhibit A.) 1(b) A debt to a bank in the

amount of \$3,495.00 has been paid. (Applicant's Exhibit B.) 1(c) A debt owed to a bank in the amount of \$4,593.00 was settled for \$2,000.00. (Applicant's Exhibit C.) 1(d) A debt owed to a bank in the amount of \$11,858.00 has been settled. (Applicant's Exhibit D.) 1(e) A debt owed to a bank in the amount of \$12,995.00 is being paid on a monthly basis in the amount of \$143.00. 1(f) A debt owed to a creditor in the amount of \$10,340.00 remains outstanding. The creditor has filed a complaint against the Applicant and is seeking a judgment. The Applicant indicates that he is in negotiations with the creditor and plans to settle the matter on February 1, 2011. (Tr. p. 60-61 and Applicant's Exhibit E.) 1(g) A debt owed to a creditor in the amount of \$92,294.00 was a second mortgage on a foreclosed apartment building. The debt was cancelled on September 9, 2009, see 1099-C. (Tr. p. 61 and Applicant's Exhibit F.)

Out of the six delinquent debts set forth in the SOR, he has paid off or resolved three of them. He is in the process of paying or setting up payment plans with the other three creditors, and will pay them off soon. The Applicant recently learned that he will receive an additional \$2019.00 each month from the military for post 9/11 college resources that he will use to help pay off his debts sooner. (Applicant's Tr. Post-Hearing Exhibit and Tr. p. 67.) The Applicant is currently renting a house and is paying all of his regular monthly expenses in a timely manner. (Applicant's Exhibit I and Tr. pp. 68.)

Two witnesses testified on behalf of the Applicant. A Senior Chief and member of a SEAL team who was at one time trained by the Applicant, who is highly decorated for his extensive combat career, and who is now the Applicant's supervisor; and the Applicant's direct supervisor, who is also a SEAL, testified that the Applicant is a hard worker with lots of experience, a good role model who has outstanding character. He is a professional, who is honest and trustworthy, who would never jeopardize the interests of the United States, and who is highly recommended for a position of trust. (Tr. pp. 26-39).

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.(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.

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 downturn in the real estate market, caused his financial difficulties. It was unforeseeable that the Applicant would have problems finding tenants for his rental properties and when he did, he acted responsibly and with integrity under the circumstances. In regard to the foreclosed property, the Applicant first tried to attract

other tenants, but was unsuccessful, and then used his credit cards to pay the mortgage until he could no longer afford to. According to the law of the state in which the property is located, he no longer has any liability or any deficiency or action by the holder of the first mortgage. He did the best he could under the circumstances, and as much as is humanly possible to resolve his financial problems. In regard to his personal residence, he was forced to short sale the property and has settled his liability to the lender on the second mortgage. The Applicant has learned a harsh lesson from his unsuccessful real estate investments and has no intentions to continue this involvement.

Under the particular circumstance of this case, the Applicant has made a good faith effort to resolve his past due indebtedness. But for his real estate investments, he has a stellar financial record demonstrating that he has always paid his bills on time. He understands the importance of paying his bills on time and living within his means. He must continue to resolve his remaining delinquent debts and remain fiscally responsible in the future. There is sufficient 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.

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