



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 10-03443
)
)
Applicant for Security Clearance)

Appearances

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

August 2, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on December 15, 2009. (Government Exhibit 1.) On September 10, 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 24, 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. On February 25, 2011, the matter was rescheduled, and the hearing was set for April 6, 2011. At the hearing the Government presented eight exhibits, referred to as Government Exhibits 1 through 8 that were admitted without objection. The Applicant presented six exhibits, referred to as Applicant's Exhibits A and F 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 27, 2011. The Applicant submitted five Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A through E that were admitted without objection. The official transcript (Tr.) was received on April 19, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 47 years old and unmarried. He is a high school graduate with two years of college. He is employed with a defense contractor as a Federal Protective Officer 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 allegations 1(a), 1(c), 1(e), 1(f), 1(h), 1(i), and 1(k) of the SOR. He denies allegations 1(b), 1(d), 1(g) and 1(j). Credit Reports of the Applicant dated December 19, 2009; July 30, 2010; October 27, 2010; and March 23, 2011, reflect that the Applicant is indebted to each of the creditors set forth in the SOR in the amount that totals in excess of \$70,000.00. (Government Exhibits 2, 5, 6 and 8.)

The Applicant has 22 years of service in various positions that include a Logistic Coordinator for a defense contractor, a Police Officer, a Federal Protection Officer, and a Reserve Police Officer for various agencies.

Prior to 2007, the Applicant lived with his significant other and shared the living expenses. They earned approximately \$90,000 jointly, had \$10,000 in savings, paid their bills on time, and had good credit. Most of the credit was in the Applicant's name. Their agreement was that the Applicant pay the mortgage while she paid the utilities and credit cards. He and his significant other purchased a house in 2002, and in 2006 they were having another home built. Sometime in 2007, his significant other stopped paying her share of the bills in order to save up money so she could leave the relationship. They separated in 2007. The drastic reduction in income caused the Applicant to lose his house and fall behind on his bills.

In July 2007, the Applicant took on a second job at a hospital. On the job, he contracted a deadly infection, known as MRSA, that centralized in his knee. He was hospitalized for emergency knee surgery for eleven days without medical insurance. While undergoing therapy, he was unable to work for two months and had no income. From July 2007 to June 2008, the Applicant was on disability. By the end of 2008, he returned to work. Since then, he has been trying to play catch up on his bills.

In September 2010, while at work, the Applicant was required to perform a physical agility test and re-injured his knee. He failed the agility test and was subsequently terminated from his employment. He obtained a workers compensation lawyer, filed a lawsuit, and was reinstated on the job. In September 2010, the Applicant left work and went back on disability due to his knee injury. The workers compensation doctor suggested that he undergo a knee replacement. The Applicant is currently waiting to find out when or if he is able to return to work.

The Applicant has been unable to pay his delinquent debts. He has contacted each of his creditors by letter to inform them of his financial situation. The following delinquent debts remain outstanding; A delinquent debt owed to a creditor in the amount of \$2,720.00 remains owing. (Applicant's Answer to SOR). He is currently disputing the debt. The Applicant believed that he had paid a delinquent debt owed to a creditor in the amount of \$585.00. (Tr. p. 62.) A delinquent debt owed to a creditor in the amount of \$7,066.00 remains owing. (Tr. p. 63.) A delinquent debt owed to a creditor in the amount of \$618.00 was reduced to \$400.00 and remains owing. (Tr. p. 64.) A delinquent debt owed to a creditor in the amount of \$10,486.00 remains owing. (Tr. p. 66.) A delinquent debt owed to a creditor in the amount of \$6,246.00 remains owing. (Tr. p. 67 and Applicant's Exhibit C.) The Applicant is unaware of the delinquent debt owed to a creditor in the amount of \$9,342.00. He plans to try to research it more. (Tr. p. 68.) A delinquent debt owed to a creditor in the amount of \$1,138.00 remains owing. (Tr. p. 68.) A delinquent debt owed to a creditor in the amount of \$4,882.00 remains owing. (Tr. p. 69.) The Applicant plans to start making payments of \$25.00 monthly. The Applicant claims that he does not owe the delinquent debt in the amount of \$4,123.00. (Tr. p. 70.) A delinquent debt owed to a creditor in the amount of \$24,363.00 remains unpaid and owing. (Tr. pp. 70-71). The debt was for a vehicle that was surrendered because the payments were \$800.00 a month, and the Applicant was on disability and could not afford to pay them.

The Applicant is currently on disability and brings home \$1,400.00 bi-weekly. His present income only allows him to be able to make payments on his expenses that are necessary to survive such as his medical insurance, rent, utilities and his car payment. (Tr. p. 72.) Realizing that his debts are excessive and out of his control, he recently hired an attorney to file Chapter 7 Bankruptcy on his behalf. (Applicant's Post-Hearing Exhibit D.)

The Applicant has received numerous awards, commendations and certificates of achievement for his work performance and accomplishments. (Applicant's Post-Hearing 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; 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.

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 separation from his significant other, his unexpected knee infection and its complications, his knee injury at work, his loss of work, and his year on disability, all contributed to his financial difficulties. These things were completely unforeseeable. Given his circumstances, the Applicant has not had sufficient income to pay his delinquent debts. For some time now, the Applicant has known that his delinquent debts were out of control and at issue. Although he contacted the creditors and informed them of his circumstances, he did nothing more. Recently, the Applicant has hired an attorney and plans to file for bankruptcy protection under Chapter 7. However, at the present time, his debts remain excessive, owing and delinquent.

Once the Applicant has filed bankruptcy and discharged his debts, he will be in a better position to be eligible for access to classified information. At this time, however, the Applicant has not done enough to demonstrate 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. Although Mitigating Condition 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* applies, is partially applicable, but is not controlling in this case. The Applicant has simply not done enough to demonstrate that he is or can be financially responsible. 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, a lack of candor, and a 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, including the Applicant's awards and commendations for his work performance. However, they do 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 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.:	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.

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