



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 10-04436
)
Applicant for Security Clearance)

Appearances

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

May 29, 2012

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Questionnaire for National Agency Position (SF-86) on August 25, 2009. (Government Exhibit 1.) On November 29, 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 January 13, 2012, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on March 13, 2012. A notice of hearing was issued on March 14, 2012, and the hearing was scheduled for April 17, 2012. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant presented three exhibits, referred to as Applicant's Exhibits A through C. He also testified on his own behalf. The record remained open until close of business on May 2, 2012, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted six Post-

Hearing Exhibits on April 30, 2012, which were admitted without objection, and are referred to as Applicant's Post-Hearing Exhibits A through F. The official transcript (Tr.) was received on May 4, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

The Applicant is 48 years old and divorced with three children. He has two years of college. He is employed with a defense contractor as a Computer Service Representative 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 admitted each of the allegations set forth in the SOR under this guideline. Credit Reports of the Applicant dated August 11, 2011; November 14, 2011; and April 10, 2012, reflect that the Applicant was at one time indebted to each of the creditors set forth in the SOR, in an amount totaling in excess of \$40,000. (Government Exhibits 2, 4, and 6).

From 1984 to 1994, for ten years, the Applicant served honorably in the United States Air Force. In February 1987, he got married and had two children from the marriage. During that time, he worked full time, and also had a part-time evening job. He made the money and took care of the household and his children. His wife did not work outside of the home, but she managed the money, paid the bills and handled their finances.

In 1998, the Applicant's sister got involved with a man who had committed a double homicide, involving a mother and her daughter. His sister was accused of withholding information stemming from the felony. All of the family including the Applicant contributed money to help with her legal fund for representation. The Applicant contributed about \$6,500. During this period, although he was still able to pay for his essentials he found it difficult to pay all of his bills. He could not afford to pay his car payment and so he allowed it to be voluntarily repossessed. His sister was ultimately acquitted of all charges.

The Applicant testified that his marriage began to suffer as there was no intimacy or communication. In 1999, he had an affair and a child out of wedlock. (Tr. p. 54.) That same year, as a result of the housing boom, the Applicant's wife started real estate

school and obtained her license. These were additional expenses. She started selling homes and making good money. The Applicant soon realized, however, that she was not contributing what she made toward the household expenses. She decided to buy a house on her own without consulting with him. In December 2003, the Applicant and his wife began arguing about their finances. The argument escalated to the point where they started physically fighting. The Applicant claims that he only acted in self defense as his wife attacked him first. She accused the Applicant of beating her up. The Applicant was charged with domestic assault and battery, and malicious wounding. As a result, the Applicant was sentenced to six months in jail, five suspended. He spent two weeks in county jail and because his employer was not aware of what happened, the Applicant was terminated from his employment in February 2004. (Tr. pp. 50-51.)

The Applicant and his wife separated and she filed for divorce in 2004. During their separation, the Applicant was unemployed and depressed. From February 2004 to December 2005, he had no work and lived off of his savings. He later managed to work temporary jobs, to have money to pay child support. He was homeless and slept in his car for several months. (Tr. p. 51.) A friend learned about his hard times and invited him in to share his place. The divorce was final in 2006.

In 2006, the Applicant started working and getting back on his feet. In March 2009, he began working for his current employer and he now earns \$47,000 annually. (Tr. p. 63.) The Applicant's ex-wife sent him a box of mail containing bills that he had no prior knowledge of. At that point, he started addressing his debts. In November 2011, when the Applicant received the SOR, he learned for the first time that he had a number of other outstanding debts from the past. He contacted each of his creditors and made arrangements to pay them. The Applicant has resolved many delinquent debts not alleged in the SOR. (See Applicant's Exhibit A.) Some of his delinquent debts have been paid in full, the others are being paid on a monthly basis. The Applicant has also given money to his ex-wife, as she is currently unemployed. He has also provided financial support for his adult children and grand-daughter.

The following debts listed in the SOR have also been addressed. 1(a). A debt owed to the creditor in the amount of \$222 has been paid. (Applicant's Post-Hearing Exhibit A.) 1(b). A debt owed to a state for delinquent back taxes for tax years 1991, 2001, 2002, 2003 and 2007, in the amount of \$6,788.85 is being paid through monthly installments of \$125.00. (Applicant's Post-Hearing Exhibit B.) 1(c). A debt owed to a creditor in the amount of \$349 has been paid. (Tr. pp. 73-74.) 1(d). A debt owed to a creditor in the amount of \$14,922.27 is being paid in monthly payments of \$75.00. (Tr. p. 74-75.) This last month, the Applicant doubled up on the payment and he now plans to continue paying \$150.00 monthly toward the debt to resolve it sooner. 1(e). A debt owed to the state Department of Social Services for delinquent child support in the amount of \$59,919.91 is being paid through garnishment in the amount of \$1,196.00 monthly. (Tr. pp. 77.) The Applicant has been making these payments since October 15, 2011, and the debt has been significantly reduced to about \$32,500,000. The Applicant testified that in addition to the normal child support obligation, an additional

\$100 is deducted to go toward the arrears. (Tr. p. 75.) He plans to pay off each of his delinquent debts as soon as possible.

The Applicant testified that he has recently asked his supervisor for a transfer to take a job in another state in a job that is paying more. (Applicant's Exhibit C.) He is currently selling all of his personal belongings in his apartment so he can pay more toward his outstanding debts.

Letters submitted on behalf of the Applicant from his supervisor and other professional associates who know him well attest to his attention to detail, keen intellect, and professionalism. He is considered responsible, trustworthy and an honorable man who operates with integrity at all times. He has always secured and protected classified information properly and according to company and DoD policy. (Applicant's Post-Hearing Exhibit F.)

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 circumstances largely beyond his control, namely his divorce and its related expenses, his two years without stable employment, as well as his period of depression, contributed to his financial problems. He has also been too generous giving money to his ex-wife when he should have been paying his bills. For some time, he mismanaged his finances. He now realizes what his priorities are and has been working diligently to resolve his indebtedness.

This was an isolated incident that will not recur since the Applicant now has a clear head and understands that he must remain fiscally responsible if he is to hold a security clearance. Admittedly, the Applicant has suffered some difficult financial times. Recently, he has made a good-faith effort to resolve his past due indebtedness. He has paid many of his delinquent debts off completely. He has also addressed each debt listed in the SOR. Those debts that he has not paid in full, he has set up a payment plan that he is following. He has not incurred any new debt. He understands the importance of paying his bills on time and living within his means. He has clearly demonstrated that he can properly handle his financial affairs. There is clear evidence of financial rehabilitation. 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 obligations*, 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. I have considered his favorable character reference letters as well as his military career. (Applicant's Post Hearing Exhibit F.) 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.

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