



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-04647

Appearances

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

August 30, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing dated February 25, 2010. (Government Exhibit 1.) On February 24, 2011, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 access to classified information for the Applicant and recommended referral to an Administrative Judge to determine Applicant's eligibility for a security clearance.

The Applicant responded to the SOR on March 21, 2011, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to this Administrative Judge on April 18, 2011. A notice of hearing was issued on April 26, 2011, scheduling the hearing for May 18, 2011. The Government presented seven exhibits, referred to Government Exhibits 1 through 7, which were admitted without objection. The Applicant presented no documentary exhibits. He testified on his own

behalf. The record remained open to allow the Applicant the opportunity to submit documentary evidence. The Applicant submitted seven documentary exhibits referred to as Applicant's Post-Hearing Exhibits A through G, which were admitted without objection. The official transcript (Tr.) was received on June 1, 2011. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for a security clearance is granted.

FINDINGS OF FACT

The following Findings of Fact are based on the Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 35 years and has a Bachelor's Degree in IT Security and is currently working on his Master's Degree. He is employed by a defense contractor as a Product Development Technician, 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). After a complete and thorough review of the evidence in the record, and upon due consideration of the same, 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 a 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 under this guideline that total approximately \$20,000.00. (See, Applicant's Answer to SOR.) Credit Reports of the Applicant dated May 14, 2004; March 4, 2010; and May 17, 2011, collectively reflect that at one time each of the delinquent debts set forth in the SOR were at one time owing. (Government Exhibits 5, 6 and 7.)

The Applicant comes from a family with a long history of military service, including his grandfather, uncle, and father who served in the United States Air Force, and cousins who attended the Air Force Academy. The Applicant served for four years on active duty in the Air Force from January 1995 to January 1999. (Government Exhibit 1.) During his military career he received a number of medals and commendations. (Applicant's Post-Hearing Exhibit A.) He was never court-martialed or in any trouble of any kind.

After being honorably discharged from the Air Force in 1999 he became employed in the defense industry, working seven days a week, and getting lots of overtime. He and his fiancé had a child and, in 2003, he bought a house. He also had a child from a previous relationship that he has full custody of and is the sole supporter. In 2008, due to the bad economy, his overtime was significantly reduced. In 2009 his

girlfriend left the relationship, and he found it difficult to pay all of the household bills on one income.

In 2010, when the Applicant met with the agent concerning his clearance background investigation, he first learned the extent of his indebtedness. (Tr. pp. 46 and 59.) At that point, he started working to resolve it. He had intended to be able to pay off all of his delinquent debt before the hearing, but in April 2010, he unexpectedly received a summons from his fiancé obtaining a court order for child support. Although the Applicant was already paying her \$500.00 monthly on an informal basis, and providing school clothes and other necessities, she wanted more. An order was subsequently entered by the court for child support in the amount of \$922.00 monthly. This child support is currently garnished from his paycheck for the support of one child. His payments are scheduled to be reduced to \$799.00 monthly soon. (Government Exhibit 4.)

Despite this, he has paid off all of his creditors listed in the SOR, by addressing them one by one, except four that remain owing. 1(a). A debt he owed to a creditor in the amount of \$2,586.00 has been negotiated down to \$972.00, and he plans to pay it off as soon as possible. (Tr. p. 48.) 1(b). A debt to a creditor in the amount of \$7,291.38 is arranged to be settled for \$2,906.00. The Applicant is scheduled to start paying \$50.00 monthly toward the debt until it is resolved. (Tr. p. 49.) 1(c). A debt owed to a creditor in the amount of \$4,020.00 is arranged to be settled for \$1,608.00, and the Applicant plans to set up a payment plan and pay the debt. (Tr. p. 51.) 1(d). The Applicant believes that a debt owed to a creditor in the amount of \$6,416.00 may be the same debt listed in allegation 1(b). His credit report is not definite on this point. (Tr. p. (52-53.))

The following debts have been paid. (See Applicant's Post-Hearing Exhibit C.) 1(e). A debt owed to a creditor in the amount of \$464.00 has been paid. (Tr. pp. 53-54.) 1(f). A debt owed to a creditor in the amount of \$76.00 has been paid. (Tr. p. 54.) 1(g). A debt owed to a creditor in the amount of \$222.00 has been paid. (Tr. p. 55.) 1(h). A debt owed to a creditor in the amount of \$203.00 has been paid. (Tr. p. 57.) 1(i). A debt owed to a creditor in the amount of \$148.00 has been paid. (Tr. p. 57.) 1(j). A debt owed to a creditor in the amount of \$30.00 has been paid. (Tr. p. 58.)

Not listed in the SOR is his mortgage that he modified in order to keep his house. His loan payments were reduced from \$2,200.00 monthly to \$1,391.00, and he is now trying to lock in the interest rate. (Tr. pp. 60-61.)

The Applicant is presently living within his means, and has accumulated no new debt. He is focused on resolving his debts. At the present time, he has no discretionary monies. He is hoping to have his child support reduced since the court calculated his support obligation based upon an annual salary of \$6,500 monthly and he has never earned that much. (Tr. p. 65 and Applicant's Post-Hearing Exhibit B.) The Applicant plans to use any future discretionary monies to pay off his debts as soon as possible. (Tr. p. 69.)

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for a security clearance determination because he intentionally falsified material aspects of his personal background during the security clearance process.

The Applicant denies each of the allegations set forth in the SOR under this guideline. (See, Applicant's Answer to SOR.) The Applicant completed a security clearance application dated February 25, 2010. (Government Exhibit 1.) Question 26 states: "For the following, answer for the last seven years, unless otherwise specified in the question. Disclose all financial obligations including those for which you are a cosigner or guarantor." Question 26.(g) of the application asked the Applicant, "Have you had bills or debts turned over to a collection agency?" The Applicant answered, "NO." (Government Exhibit 1.) The Applicant failed to disclose those debts set forth in 1(b) and 1(d) through 1(j) of the SOR.

Question 26.(h) of the application asked the Applicant, "Have you had any account or credit card suspended, charged off or cancelled for failing to pay as agreed?" The Applicant answered, "NO." (Government Exhibit 1.) The Applicant failed to disclose those debts set forth in 1(a) and 1(c) of the SOR.

Question 26.(m) of the same application asked the Applicant, "Have you been over 180 days delinquent on any debt?" The Applicant answered, "NO." (Government Exhibit 1.) The Applicant failed to disclose those debts set forth in 1(a) through 1(j) of the SOR.

Question 26.(n) of the same application asked the Applicant, "Are you currently over 90 days delinquent on any debt?" The Applicant answered, "NO." (Government Exhibit 1.) The Applicant failed to disclose those debts set forth in 1(a) through 1(j) of the SOR.

The Applicant explained that he did not obtain a copy of his credit report and did not know the extent of his indebtedness when he answered the questions on his security clearance concerning his finances. He stated that his fiancé had obviously been covering up some of their debt, and he was not aware of it. He states that he did not intend to deceive the Government by failing to disclose his debts. He was not as careful as he should have been, which was a mistake, and he has learned from this experience. (Tr. pp. 74-75.) Applicant's testimony was credible.

The Applicant testified that his friends and coworkers consider him a truthful and honest individual. He spends a lot of time with his son who is now a teenager. He is also in his Church and Bible study.

A letter from the Applicant's previous fiancé indicates that the Applicant has always been a responsible father and provider for his two children. (Applicant's Post-Hearing Exhibit D.)

A number of letters from his supervisor, coworkers, former manager, father, stepmother, and best friend all attest to the Applicant's reliability, trustworthiness, integrity, excellent work ethic and attitude. He is said to show great leadership skills and consistent quality in work performance. (Applicant's Post-Hearing Exhibit D.)

The Applicant received a number of letters from his Commander in the Air Force for his outstanding efforts. (Applicant's Post-Hearing Exhibit D.)

The Applicant has received "spotlight awards" from his current employer for his superior work performance. (Applicant's Post-Hearing Exhibit E.)

The Applicant has consistently kept his company security officer updated on his financial situation. (Applicant's Post-Hearing Exhibit F.)

POLICIES

When evaluating an Applicant's eligibility for a security clearance, the Administrative Judge must consider the disqualifying and mitigating conditions in the Adjudicative Guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as "the whole-person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by Applicant or proven by Department Counsel" The Applicant has the ultimate burden of persuasion as to obtaining a favorable security clearance decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it

grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently failed to protect or safeguard classified information. Such, decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

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:

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.

Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers

during the security clearance process or any other failure to cooperate with the security clearance process.

Condition that could raise a security concern:

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;
- 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 behavioral 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, a security clearance is granted to only to those defense contractor employees 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 such access may be involved in instances of financial irresponsibility or dishonesty, 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 eligibility for 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 and access to classified information.

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 the Applicant's excessive indebtedness was caused in part by a reduction in overtime that he had grown accustomed to depending on. In addition, his relationship breakup with his fiancé, and the unexpected court order requiring him to pay a large child support obligation, caused even further financial difficulties. Since learning of the extent of his indebtedness, he has adjusted his lifestyle and budgeted himself on a reduced income in order to resolve his debts. He has modified his mortgage on his home to make it affordable. He has paid off many of his smaller debts, and is planning to pay the larger ones soon. He is current on his child support obligations and is trying to get them reduced measurable with his current income. He plans to use any discretionary monies toward resolving his remaining bills. Under the circumstances, he has done everything humanly possible to show that he is responsible, trustworthy and reliable. At this point, he is working to rebuild his credit.

There is sufficient evidence of financial rehabilitation at this time. 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 circumstance, 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. The Applicant has indeed made a good faith effort to repay his overdue creditors or otherwise resolve his debts. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

Under Guideline E, the Applicant clearly did not deliberately conceal material information from the Government on his security clearance application concerning his delinquent debts. Admittedly, he was careless in answering the questions, but he was not deceitful. At the time he answered the questions, he was not aware of the extent of his indebtedness. He knew he had some debt, but he did not know the extent of it. He and his fiancé had separated and did not communicate well about their finances. He now realizes the importance associated with the security clearance application; and indicates that in the future when he completes it, he will first obtain a copy of his credit report as a source of reference and be as accurate as possible. Accordingly, I find for the Applicant under Guideline E (Personal Conduct.)

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 good judgement, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, or other characteristics indicating that the person may properly safeguard classified information.

Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his Financial Considerations and Personal Conduct. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

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.

Paragraph 2: For the Applicant.

Subpara. 2.a.: For the Applicant.
Subpara. 2.b.: For the Applicant.
Subpara. 2.c.: For the Applicant.
Subpara. 2.d.: For the Applicant.

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge