



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-05358

Appearances

For Government: Jeff A. Nagel, Department Counsel

For Applicant: *Pro se*

October 21, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on January 4, 2010. (Government Exhibit 1.) On March 24, 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 May 23, 2011, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on July 20, 2011. A notice of hearing was issued on July 20, 2011, and the hearing was scheduled for August 15, 2011. At the hearing the Government presented eight exhibits, referred to as Government Exhibits 1 through 8, which were admitted without objection. The Applicant presented five exhibits, referred to as Applicant's Exhibits A through F, which were also admitted without objection. He also testified on his own behalf. The record remained open until close of business on

September 1, 2011, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A, which was admitted without objection. The official transcript (Tr.) was received on August 23, 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 34 years old and married with one child and one on the way. He has a bachelor's degree in Mechanical Engineering. He is employed with a defense contractor as a Project Engineer 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 all of the allegations set forth in the SOR. Credit Reports of the Applicant dated February 19, 2010; August 9, 2010; and August 15, 2011 reflect that the Applicant was indebted to each of the creditors set forth in the SOR, in an amount totaling in excess of \$72,000. (Government Exhibits 2, 3 and 8.)

From 2003 to 2007, the Applicant was employed with a top sub-prime mortgage banker and over time earned significant income. By the end of 2006, he was earning nearly \$350,000 annually and had a lifestyle that included a number of real estate investments. (Tr. p. 26.) He owned a single family unit, a condominium, some property, a house, and some overseas investments, including a potential resort investment that was valued over 2 million dollars. (Tr. p. 23-24.) With the onset of the banking crisis and the financial collapse of the sub-prime loan industry, the Applicant's employer was forced to file for bankruptcy. The Applicant lost his job, and did not find steady employment until the end of 2009, when he began working for his current employer. From 2007 to the end of 2009, he withdrew \$140,000 from his 401(k) to live on. (Tr. p. 52.) He was also living on credit cards. He is currently earning \$75,000 a year.

In May 2011, he filed for Chapter 7 bankruptcy and listed each of the delinquent debts set forth in the SOR. At the time of the hearing, his debts had not yet been discharged. (Tr. p. 30.) He also plans to have his back taxes discharged as his attorney has informed him that they are dischargeable based upon some legal technicality. (Tr. p. 80.) Applicant's Post Hearing Exhibit A is a copy of the Discharge of Debtor dated August 22, 2011, indicating that his debts were discharged in Chapter 7. He also

contends that his taxes older than three years were discharged. He did not include a list of the creditors that were included in the Bankruptcy discharge.

At the time of the hearing, the following delinquent credit card debt, mortgage accounts, taxes, gambling debt, and overpaid unemployment benefits remain owing. A debt to a creditor for a judgment entered against him in October 2009 in the amount of \$2,502 for overpaid unemployment benefits remains owing. A debt owed to the IRS for a tax lien entered against him in June 2010, in the approximate amount of \$14,528, remains owing. A debt owed to a creditor in the amount of \$11,796 remains owing. A debt owed to a creditor in the amount of \$6,117 remains owing. A debt owed to a creditor in the amount of \$596 remains owing. A debt owed to a creditor in the amount of \$1,388 remains owing. A debt owed to a creditor in the amount of \$1,197 remains owing. A debt owed to a creditor in the amount of \$8,438 remains owing. A debt owed to a creditor in the amount of \$2,127 remains owing. A debt owed to a creditor in the amount of \$2,144 remains owing. A debt owed to a creditor in the amount of \$3,559 remains owing. A debt owed to the state taxing authorities in the amount of \$12,858 remains owing. A gambling debt account in the amount of \$5,000 remains owing.

Three mortgage loans are now delinquent and owing. A mortgage account that is past due in the amount of \$209,684 is for his primary residence. The account is in foreclosure status with a total loan balance of \$800,000. A mortgage account on another house is past due in the amount of \$58,770. The account is in foreclosure status with a total balance loan amount of \$910,000. Another mortgage account has been charged off in the amount of \$420,000.

He explained in frustration that in regard to one of his properties, a rental house, that had a monthly mortgage payment of \$10,000, he became so desperate to get a renter that he rented it for \$2,000 monthly. His renter paid for the first month of rent and then stopped paying. It took him a year to evict her. (Tr. p. 74.)

The Applicant testified that he stopped making payments on his leased BMW sometime in 2008, but the creditor has not yet picked up the car. The lease expired in 2009, and the Applicant is still driving it because he did not have a car to drive. He plans to turn it back in soon. (Tr. p. 40.)

In 2008, he went to Las Vegas and played blackjack and accrued a \$5,000 gambling debt. At one point, he initially started paying the debt, but he had to stop when he lost his job. He started paying again in July 2011.

His primary residence is now worth approximately \$500,000. He refinanced it when it was appraised at 1 million dollars and he now owes \$800,000 on the loan. His monthly payments on his home are \$5,500 a month. He and his wife together cannot afford the payments. He is currently trying to work out a short sale or loan modification.

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 obligations; and

19.(f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern.

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 in 2006, the Applicant was living an extravagant lifestyle and earned the money to do so. Unbeknownst to him, as his dream caved in, and he lost his job, his income and his assets, he acquired enormous debt. It can be argued that circumstances beyond his control, namely the collapse in the sub-prime mortgage loan industry, primarily caused his financial difficulties. However, he took significant risks with multiple mortgages and with risks come consequences. The consequences resulted in significant debt that he could not afford to pay. Since the end of 2009, however, he has been working full time and is now earning \$75,000 annually, but he remains indebted. Although he has filed for Chapter 7 bankruptcy, and his debts have recently been discharged, he continues to have other financial problems, including issues with his mortgages that have not been resolved.

Under the particular circumstance of this case, the Applicant has not met his burden of proving that he is worthy of a security clearance at this time. Although his credit card debt has recently been discharged, he still has financial problems. He has not shown that he has done enough to resolve his financial issues. He has not been reasonably, responsibly or prudently addressing his financial situation. He continues to drive a leased BMW that he has not paid for in over a year. He obviously does not understand the importance of paying his bills on time and living within his means, as it has not been a priority for him. There is insufficient evidence of financial rehabilitation. At this point, the Applicant has not demonstrated that he can properly handle his financial affairs or that he is fiscally responsible. It is still unclear whether he will be able to make the huge adjustment from living extravagantly to a regular middle class lifestyle. 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*; 19.(c) *a history of not meeting financial obligations*, and 19.(f) *financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern* 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, it is not controlling. He has not done enough to show that he is financially responsible. Accordingly, I find against 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 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. It does 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 not 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.

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