



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
-----) ISCR Case No. 10-05869
)
Applicant for Security Clearance)

Appearances

For Government: Melvin Howry, Department Counsel
For Applicant: Theodore K. Roberts, Attorney At Law

September 29, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on January 5, 2010. (Government Exhibit 1.) On March 18, 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 April 1, 2011, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on July 5, 2011. A notice of hearing was issued on July 6, 2011, and the hearing was scheduled for August 16, 2011. At the hearing the Government presented five exhibits, referred to as Government Exhibits 1 through 5 that were admitted without objection. The Applicant called one witness and presented seventeen exhibits, referred to as Applicant's Exhibits A through Q 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 September 1, 2011. The Applicant submitted no Post-Hearing Exhibits.

The official transcript (Tr.) was received on August 24, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

The Applicant is 44 years old and has a Master's Degree. He is employed as the Vice President with a defense contractor 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). 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 with some qualifications that he was indebted to each of the creditors set forth in the SOR totaling at one time approximately \$200,000. (Applicant's Answer to the SOR.) Credit Reports of the Applicant dated January 12, 2010; February 17, 2011; and August 10, 2011, collectively reflect that the Applicant was indebted to these creditors. (Government Exhibits 2, 3 and 5.)

Prior to 2009, the Applicant had an excellent credit history. His FICO score was above 750 and he paid all of his bills on time. Since he and his wife had no pension or investment properties, they researched the real estate market and decided to make some investments. Between 2004 and 2006, they purchased four rental properties. In 2004, he purchased a house in a new development and rented the property. He hired a property management company and the rents covered the mortgage and expenses. Later in 2004, he purchased another rental property in the same area. Also, in 2006, he purchased a four unit multi-complex located out of the state. In 2006, he purchased another out of state property. Between 2006 and 2007, rents began to decline and the Applicant had renters skip out without paying the rent. To cover the costs of these losses, he used cash advances from credit cards. In 2008, real estate property values took a drastic turn for the worse and the Applicant put all four properties up for sale. Before doing so, he refinanced his primary residence, obtaining a larger second line of credit, to help fund the losses that were coming from the rental properties. The loan on his primary residence which was originally \$300,000 is now \$675,000. Two of the investment properties were sold at a loss. A third property was short saled, and the fourth was foreclosed upon.

About this same time in 2008, the Applicant's employer made a swift decision to acquire a company hoping to use the cash flow of the new company to offset the loss at their facility. Company management soon realized that they had miscalculated the

profitability of the company they purchased. The Applicant's employer was forced to come up with cash to offset the loss. The company was financially strapped and in early 2009, stopped paying the Applicant for his travel costs associated with his job. The Applicant was required to front his travel costs and his company would later reimburse him. (Applicant's Exhibit Q.) The Applicant was not reimbursed for six months. During that period, he used his credit cards for cash advances to cover his expenses and the mortgages that were out of control. To help keep his primary residence, the Applicant started two part-time teaching jobs to be able to make the house payment and buy food. In December 2010, the Applicant helped his company bring in new financial investors and they brought the company's payroll current. They also offered the Applicant a promotion to Vice President. His gross earnings for tax year 2010 show income of \$259,000; and in 2009 of \$233,935. (Tr. p. 108.)

In late 2009, the Applicant hired a credit counseling agency to assist him in resolving his debt. He soon realized the agency was not helping him and only taking his money. In March 2010, he hired a law firm who has been negotiating with his creditors for the past year to resolve his indebtedness.

As a result of the earlier cascading debt turmoil, the following debts set forth in the SOR became delinquent. All but one debt has been resolved. A delinquent debt owed to a creditor in the amount of \$10,430 has been settled. (Applicant's Exhibit E, and Tr. p. 78.) A delinquent debt owed to a creditor in the amount of \$24,536 has been settled. (Applicant's Exhibit D, and Tr. p. 78.) A delinquent debt owed to a creditor in the amount of \$22,194 has been settled. (Government Exhibit 5, and Tr. p.79.) A delinquent debt owed to a creditor in the amount of \$5,168 has been settled. (Applicant's Exhibit M.) There remains a question as to whether a delinquent debt owed to a mortgage lender in the amount of \$39,000 on a foreclosed property has been forgiven. (Tr. p. 81.) The Applicant's attorney is in the process of helping the Applicant resolve this issue. A delinquent debt owed to a mortgage lender on a property that was short sold in the amount of \$468,000 has been forgiven. (Applicant's Exhibit G.) A delinquent debt owed to a creditor in the amount of \$21,441 has been settled. (Tr. pp. 99-100.) A delinquent debt owed to a bank for a credit card in the amount of \$36,110 has been settled. (Applicant's Exhibit O.) A delinquent debt owed to a bank for a credit card in the amount of \$51,894 has been settled. (Applicant's Exhibit P, and Tr. p. 107.)

The Applicant currently owns only his primary residence with a first and second mortgage on the property. The Applicant's house payment is currently \$4,300 on the first mortgage, and \$750.00 on the second, totaling approximately \$5,400 monthly. (Tr. p. 109.) He states that he can now comfortably afford the payments on his primary residence. He and his wife also now have 401(k) retirement plans that total about \$320,000. (Tr. p. 116.)

The paralegal from the law firm hired to assist the Applicant with his debt resolutions testified that beginning in March 2010, he started working with the Applicant to resolve his unsecured credit card debt. The paralegal contacted each of the creditors and reached an agreement with each of the credit card companies. Payments were

made and letters from each of the creditors indicate that all accounts are paid in full. (Tr. pp. 125-134.)

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 obligations.

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 collapse in the housing market, coupled with the Applicant's poorly timed and numerous real estate investments, and his employer's financial problems, caused his financial indebtedness. The problems that surfaced were completely unforeseeable and isolated. Throughout this period of financial hardship, the Applicant acted reasonably and responsibly. He used his credit cards to pay his bills. He refinanced his primary residence and got two part-time jobs to help pay the mortgages and other expenses. When he could no longer afford to make the payments on the properties, he tried to sell them. He was extremely diligent in doing his part to prevent foreclosure. Three of the properties sold, and one was foreclosed upon. In regard to the foreclosed property, the Applicant did everything he possibly could to avoid foreclosure on the property. He tried to short sale the property, but the bank did not want to negotiate. He is in the process of determining whether he owes any deficiency to the lender on the foreclosed property. In the event that he does, he plans to immediately pay the debt. He currently has only his primary residence and he has resolved all of his credit card debt. Given the circumstances, the Applicant acted responsibly and with integrity under the circumstances. He hired an attorney to assist him in negotiating any deficiency he may have on the foreclosed property. He did the best he could under the circumstances, and as much as humanly possible to resolve his financial problems.

Under the particular circumstance of this case, the Applicant has made a good faith effort to resolve his past due indebtedness. Up until he started investing in real property his credit history was unblemished. Since then, he has been working hard to resolve his debts. He understands the importance of paying his bills on time and living within his means. He also knows that he must 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*

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. 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 testimony, recommendations, and dedicated 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.
Subpara. 1.h.:	For the Applicant.
Subpara. 1.i.:	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