



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 10-10885
)
)
Applicant for Security Clearance)

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 November 6, 2006. (Government Exhibit 1.) On May 2, 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 June 20, 2011. A notice of hearing was issued on June 23, 2011, and the hearing was scheduled for July 15, 2011. At the hearing the Government presented five exhibits, referred to as Government Exhibits 1 through 5 that were admitted without objection. The Applicant presented twenty exhibits, referred to as Applicant's Exhibits A through T 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 August

15, 2011. The Applicant submitted six Post-Hearing Exhibits, consisting of twenty-two pages, referred to as Applicant's Post-Hearing Exhibits A through F, which were admitted without objection. The official transcript (Tr.) was received on July 27, 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 53 years old and has a high school diploma. He is employed as a Flight Line Inspector 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 that he was indebted to each of the creditors listed in the SOR under this guideline. Credit Reports of the Applicant dated November 21, 2006; and June 30, 2010, collectively confirm that the Applicant was indebted to these creditors. (Government Exhibits 4 and 5.)

The Applicant has worked in the defense industry and for his current employer for the past thirty years, and has held a security clearance during that time. He has never had a violation or infraction. Over the course of thirty years, he has experienced financial difficulties off and on due to various reasons. In addition to living beyond his means, and overextending his credit, to improve his house and purchase furniture, he has been laid off on at least four separate occasions over the past thirty years totaling about six and a half years of unemployment. Following a twelve year marriage that resulted in divorce in 1994, he absorbed all of the debt from the marriage. In May 2008, he suffered a back injury and was on disability until October 2008. His mother passed away in October 2008, and he had to cover her funeral expenses. He needed major automobile repairs and had no emergency funds in place so he used his mortgage funds to cover the costs. As a result, he fell behind on his house payments. He tried to sell his house to meet his financial obligations, but with the fall in the housing market he was unable to do so. The market value of his home took a drastic fall from \$310,000 to \$89,000, and he could not sell it for what he owed or pay back any of his debt.

As a result of financial problems, the Applicant has admitted that he has filed bankruptcy on a number of occasions. He filed for Chapter 13 in October 1993. However, the bankruptcy was dismissed in September 1994. He filed for Chapter 7 in

June 1994, following his divorce, and his debts were discharged in November 1994. He filed for Chapter 13 in March 1999, however, the bankruptcy was dismissed in May 2000. He filed for Chapter 13 in May 2000, and the bankruptcy was dismissed in February 2002. He most recently filed for Chapter 7 in May 2010, however, his bankruptcy was dismissed in January 2011, because he did not meet the criteria to qualify. (Tr. p. 48.)

The Applicant became indebted to the following creditors. To resolve this debt, he borrowed \$20,000 from his 401(k), paid the taxes required to do so, and negotiated with each of the creditors to resolve his debt. (Tr. pp. 25-26 and 39-40.) Except for the first and second mortgages that are in the process of being modified, each of the debts have either been paid off or settled. A debt owed to a bank for a first mortgage account past due in the amount of \$20,034 with a balance of \$213,549, is currently in the process of being modified. A debt owed to the same bank for a second mortgage in the amount of \$57,318 has not yet been addressed. The Applicant does not know if the second mortgage will be included as part of the modification on the first or whether he will have to address the debt separately. A debt owed to the bank in the amount of \$2,357 has been resolved. (Applicant's Exhibit G.) A debt owed to the bank in the amount of \$1,560 has been resolved. (Applicant's Exhibit I.) A debt owed the bank in the amount of \$3,188 has been resolved. (Applicant's Exhibit J.) A debt owed to the bank in the amount of \$4,232 has been resolved. (Applicant's Exhibit K.) A debt owed to the bank in the amount of \$2,685 has been resolved. (Applicant's Exhibits L and M.) A debt owed to the same bank in the amount of \$5,283 has been resolved. (Applicant's Exhibit N.) A debt owed to a creditor in the amount of \$1,360 has been resolved. (Applicant's Exhibit O.) A debt owed to a creditor in the amount of \$1,014 has been resolved. (Applicant's Exhibit P.) A debt owed to a creditor in the amount of \$14,710 has been resolved. (Applicant's Exhibit Q.) A debt owed to a bank in the amount of \$5,666 has been resolved. (Applicant's Exhibit R.) A debt owed to a creditor in the amount of \$3,066 has been resolved. (Applicant's Exhibit S.) A debt owed to a creditor in the amount of \$4,013 has been resolved. (Applicant's Exhibit T.)

In 2010, the Applicant took classes on financial management and budgeting and he is using the knowledge he gained to live within a budget. (Applicant's Post-Hearing Exhibit D.) He currently earns about \$65,000 a year. After paying his regular monthly expenses of \$2,100, he has about \$600 left in discretionary funds. (Applicant's Post Hearing Exhibit C.) He states that he has learned a harsh lesson from his financial problems and will not allow himself to get into this problem again.

A letter of recommendation from the Applicant's supervisor and manager describes the Applicant as dependable, reliable, hard-working, conscientious, honest, courteous and ethical. He is said to consistently demonstrate an outstanding work ethic while maintaining a positive attitude about getting the job done, no matter what the obstacle. He is highly recommended for a security clearance. (Applicant's Post-Hearing Exhibit A.)

A letter from a professional associate who has sixteen years of close contact with the Applicant indicates that the Applicant has excellent communication skills. In addition he is extremely organized, reliable and computer literate. He can work independently, is able to get the job done, and is considered a tremendous asset to the organization. He is highly recommended for a security clearance. (Applicant's Post-Hearing Exhibit B.)

The Applicant has received a number of Certificates of Achievements from his employer for his dedicated service and contributions to the company. (Applicant's Post-Hearing Exhibits E and 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 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, in part, there were circumstances largely beyond the Applicant's control namely; his job lay-offs, his divorce, his mother's death and the associated expenses, his back injury and disability, and his car repairs, contributed to his financial indebtedness. However, there is also evidence in the record indicating that the Applicant overextended himself financially and brought on some of his problems. Although he had hoped to sell his house to relieve his financial indebtedness, the current real estate market prevented him from doing so. Like many Americans who are caught up in this debacle, the problems that surfaced were completely unforeseeable and isolated. At the present time, however, the Applicant has resolved all of his outstanding debt, except the first and second mortgage on his house. He is in the process of a loan modification and plans to address these loans soon. He has done 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. 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. He has taken financial management courses and is now living within a budget. 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.
Subpara. 1.j.:	For the Applicant.
Subpara. 1.k.:	For the Applicant.
Subpara. 1.l.:	For the Applicant.

Subpara. 1.m.: For the Applicant.
Subpara. 1.n.: For the Applicant.
Subpara. 1.o.: For the Applicant.
Subpara. 1.p.: For the Applicant.
Subpara. 1.q.: For the Applicant.
Subpara. 1.r.: For the Applicant.
Subpara. 1.s.: For the Applicant.
Subpara. 1.t.: 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