



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-11124

Appearances

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

September 29, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on July 13, 2010. (Government Exhibit 1.) On April 7, 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 3, 2011, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on June 9, 2011. A notice of hearing was issued on June 14, 2011, and the hearing was scheduled for July 19, 2011. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant presented five exhibits, referred to as Applicant's Exhibits A through E, which were also admitted without objection. He also testified on his own behalf. The record remained open until close of business on August

16, 2011, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted no additional documentation. The official transcript (Tr.) was received on July 28, 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 37 years old and married. He has a Bachelor's Degree in Electrical Engineering. He is employed with a defense contractor as an Engineer Technician 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, except allegation 1(b). Credit Reports of the Applicant dated August 3, 2010; February 28, 2011; and July 13, 2011, reflect that the Applicant was indebted to each of the creditors set forth in the SOR, in an amount totaling in excess of \$26,000. (Government Exhibits 2, 4 and 6.)

Prior to 2005, the Applicant paid his bills on time and he had good credit. In 2005, he was laid off and was unemployed for almost a year. (Tr. p. 30.) He applied for unemployment, but did not receive any benefits for six months. At the time he was laid off, his girlfriend had run up debt using his credit and she did not pay the bills. The Applicant had co-signed on a car loan for her, and was stuck making two car payments, his student loans and other expenses that he could not afford to pay. In February 2006, he returned to work. That year, he hired a financial debt management firm to help him with his delinquent debt. He paid the firm \$4,500 up front and a monthly fee of \$29.00, and they promised to get his debt reduced in half. The Applicant participated in the program for two years and then stopped when he determined that he could negotiate with the creditors himself. (Tr. pp. 28-29.) The Applicant knew in 2006 that he had delinquent debts but had planned on resolving them later.

In May 2009, after saving up money, he and a friend decided to invest in a house together. They purchased the house for \$300,000 and the mortgage was placed in his friend's name as the Applicant did not have the credit worthiness to finance the house. (Tr. p. 51.) The Applicant put down \$22,000. (Tr. p. 52.) They currently owe about \$265,000 on the house. Their monthly payments are \$1,520, and they rent it out for \$1,715. They use the profit to pay the taxes on the house. (Tr. p. 55.)

The Applicant claims that he had paid off three of the debts listed in the SOR. He has failed to provide documentary evidence to substantiate these claims. 1(a). The Applicant is disputing the debt owed to a creditor in the amount of \$40.00, as he does not recall ever receiving services from the creditor. (Tr. pp. 40-41.) Applicant's credit report indicates that the debt remains outstanding. 1(b). A debt owed to a creditor in the amount of \$4,243 remains owing. (Tr. p. 42.) 1(c). A debt owed to a creditor in the amount of \$10,000 remains owing. 1(d). He claims that a debt owed to a creditor in the amount of \$1,280 has been paid. 1(e). A debt owed to a creditor in the amount of \$534 remains owing. 1(f). A debt owed to a creditor in the amount of \$3,398 remains owing. (Tr. p. 49.) 1(g). He claims that a debt owed to a creditor in the amount of \$1,979 has been paid. (Tr. P. 48.) 1(h). He claims that a debt owed to a creditor in the amount of \$451 has been paid. (Tr. P. 50.) 1(i). A debt owed to a creditor in the amount of \$1,197 remains owing. (See, Applicant's Answer to SOR.)

The Applicant currently earns between \$60,000 and \$65,000 dollars annually. (Tr. p. 56.) He has about \$10,000 in one bank and \$2,000 in another. (Tr. p. 56.) He plans on paying the two largest debts set forth in the SOR, one for \$10,000 and the other for \$4,000, within three months. (Tr. p. 65.) As soon as he completes those payments he will start addressing the others. (Tr. p. 66.)

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;

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, his unexpected job lay-off from 2005 to 2006, and getting stuck having to pay his girlfriend's bills, initially caused his financial difficulties. Since February 2006, however, he has been working full time and is now earning between \$60,000 and \$65,000 annually. He has a significant amount of money in his bank accounts and has purchased a house with a friend. However, he has not resolved his delinquent debts.

Under the particular circumstance of this case, the Applicant has not met his burden of proving that he is worthy of a security clearance. He states that he has paid off three of the debts listed in the SOR, but has failed to provide documentary evidence of such payments. Most of the delinquent debts set forth in the SOR remain owing. Thus, it cannot be said that he has made a good-faith effort to resolve his past due indebtedness. He has not shown that he is or has been reasonably, responsibly or prudently addressing his financial situation. 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. The Applicant has not demonstrated that he can properly handle his financial affairs or that he is fiscally responsible. 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*; and 19.(c) *a history of not meeting financial*

obligations, apply. Although 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, applies, it is not controlling. He has not done enough to show that he is fiscally 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