



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-00160

Appearances

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

September 6, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on August 1, 2010. (Government Exhibit 1.) On April 26, 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 19, 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 22, 2011, and the hearing was scheduled for July 14, 2011. At the hearing the Government presented five exhibits, referred to as Government Exhibits 1 through 5, 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

15, 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 26, 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 43 years old and married. He has a Bachelor's Degree in Mechanical Engineering. He is employed with a defense contractor as a Technical Trainer 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 allegations 1(a) through 1(i) of the SOR. He denied allegations 1(j) and 1(k), with some explanations. Credit Reports of the Applicant dated August 10, 2010; February 9, 2011; and May 31, 2011, reflect that the Applicant was indebted to each of the creditors set forth in the SOR, in an amount totaling approximately \$85,000. (Government Exhibits 2, 4 and 5.)

Prior to 2009, the Applicant paid his bills on time, had no bad debt, and had excellent credit. He and his wife lived within their means and could afford what they purchased. His salary averaged around \$100,000. However, in 2008, he earned about \$140,000. His wife was earning \$55,000 annually. They were financially doing well, and in January 2008, he purchased a nice car. In August 2008, they purchased a house. The Applicant had no idea that in January 2009, he would be laid off from his job. The Applicant was out of work until July 2010. During his year and half of unemployment, he had surgeries on his knee that were costly. He used credit cards to help pay bills, and to sustain he and his wife. (Tr. p. 29.) They obtained cash advances to help make the mortgage payments and to pay their property taxes. In April 2009, he realized that he was getting into serious financial trouble. He contacted each of his creditors and told them about his situation and tried to make arrangements. The Applicant tried to short sale his house but ultimately lost it to foreclosure. He could not maintain his car payments and had to give it back to the company. The car was sold, and the Applicant was left owing the deficiency.

The following debts remain owing: A debt to a creditor in the amount of \$14,793.00. A debt owed to a creditor in the amount of \$11,192.00. A debt owed to a creditor in the amount of \$20,161.00. A debt owed to a creditor in the amount of

\$17,825.00. A debt owed to a creditor in the amount of \$11,664.00. A debt owed to a creditor in the amount of \$1,165.00. A debt owed to a creditor in the amount of \$46.00. A debt owed to a creditor in the amount of \$93.00. A debt owed to a creditor in the amount of \$7,836.00. (See, Applicant's Answer to SOR.)

The Applicant admits that he did not file his state and federal income tax returns for tax years 2007, 2008, and 2009 in a timely basis, simply because he was negligent. (Tr. pp. 49 and 58.) Since 2001, he has prepared the taxes for he and his wife. At some point he lost some W-2's, and as he and his wife earned more money over the years, the returns got more complicated. He states that he was not so concerned about it because he knew that he had money coming back, and did not owe anything. (Tr. p. 50 and Applicant's Exhibit A.) He has now filed all of his income tax returns and has received refunds each year. (Applicant's Exhibits C, D and E.) He states that in the future, he plans to file his income tax returns on time. (Tr. p. 50.)

In regard to his house that was foreclosed upon, he received a 1099-A from the mortgage lender who carried the first loan on the property. The document indicates that the fair market value of the property was much less than what the Applicant owed on the loan, and that the borrower is not liable for repayment. He also received a 1099-A from the mortgage lender who carried the second loan on the property. The document indicates that the fair market value of the property was zero, the balance owed on the loan was \$111,812.17, and the borrower is not liable for repayment. (Applicant's Exhibit B.)

In July 2010, the Applicant was hired by his current employer. He is now earning about \$70,000 annually. (Tr. p. 36.) Since then, he states that he has been trying to resolve his debts. He has hired an attorney to assist him with his financial delinquencies. In a letter dated March 21, 2011, to DOHA, the Applicant indicated that he was in the process of filing bankruptcy. (Government Exhibit 3.) He testified at the hearing that he should have said he was looking into filing bankruptcy, as he is trying at all costs to avoid bankruptcy. (Tr. pp. 54 and 61.) He has not filed bankruptcy yet. (Tr. p. 39.) He also has his lawyer investigating opportunities to consolidate his debts. (Tr. p. 56.)

He is currently renting and incurring no new debts. Since he has filed his income tax returns and has received refunds, he has about \$10,000 in his savings account. (Tr. p. 51.)

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 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;

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 in January 2009, caused his financial difficulties. For eighteen months he was without work, lived on credit cards, and accumulated excessive

debt. Since July 2010, however, he has been working full time and is earning about \$70,000 a year, and has not paid one debt. He states that he has hired an attorney and plans to file Bankruptcy, but has not yet filed.

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 has not addressed even one of his delinquent debts, even a small one. 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. 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 obligation*, 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, and 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.
Subpara. 1.j.: For the Applicant.
Subpara. 1.k.: For 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