



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 11-02744
)
Applicant for Security Clearance)

Appearances

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

October 24, 2012

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (E-QIP) on July 27, 2010. (Government Exhibit 1.) On May 16, 2012, 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 June 8, 2012, and he requested an administrative hearing before a DOHA Administrative Judge. This case was originally assigned to another Administrative Judge on August 7, 2012, and was transferred to the undersigned on August 13, 2012. A notice of hearing was issued on August 14, 2012, and the hearing was scheduled for September 18, 2012. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant presented six exhibits, referred to as Applicant's Exhibits A through F which were also admitted into evidence. He also testified on his own behalf. The official transcript (Tr.) was received on September 25,

2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

The Applicant is 32 years old and separated from his second wife. He has a high school diploma and almost two years of college. He is employed with a defense contractor as a Customer Service Representative 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 each of the allegations set forth in the SOR under this guideline. Credit Reports of the Applicant dated November 1, 2008; August 3, 2010; March 5, 2012; and September 15, 2012, reflect that the Applicant was at one time indebted to each of the creditors set forth in the SOR, in an amount totaling about \$15,000. (Government Exhibits 3, 4, 5 and 6.)

The Applicant joined the United States Army at the age of eighteen in July 1998, and served for eight years until he was honorably discharged in April 2006. During his military career, he held a top secret security clearance, and never had a security violation. (Tr. p. 25.) He served in Iraq from December 2004 to December 2005, and received awards and decorations for his Army service that include the Army Achievement Medal, the Iraqi Campaign Medal, and several Good Conduct Medals. (Tr. p. 27.)

In May 2006, the Applicant began working for the federal government as a civilian employee. He testified that in his present position he has held a security clearance and has never had a security violation. (Tr. p. 29.) In late 2007/early 2008 the Applicant began experiencing financial problems. He explained that at that time he was married to a woman who had very bad credit. He decided to put everything in his name because his credit was better. She used his credit and spent more than they could afford. She was a reservist that he met while in Iraq.

As a result, the Applicant became financially overextended to several credit card companies, a student loan, a furniture store, and other miscellaneous debts. In 2008, to resolve his indebtedness, he hired a debt management company to assist him with the larger debts and he paid off the smaller ones. He pays the debt management company \$250 monthly, \$90 that covers their fee and \$170 is placed in a escrow account to be

used for the Applicant's larger debts. (Applicant's Exhibit C.) Each of the delinquent debts listed in the SOR have been addressed. 1(a). A debt owed to the creditor in the amount of \$750 is being paid on a monthly basis in the amount of \$63.00 and is almost paid off. (Tr. p. 35 and Applicant's Exhibit F.) 1(b). A debt owed to a creditor in the amount of \$56 has been paid in full. (Tr. p. 36 - 37 and Applicant's Exhibit D.) 1(c). A debt owed to a creditor in the amount of \$8,307 is currently under negotiations with the debt management company and when the settlement amount is reached, the Applicant will pay the debt. (Applicant's Exhibit C.) 1(d). A debt owed to a creditor in the amount of \$835 has been paid in full. (Tr. p. 41 and Applicant's Exhibit B.) 1(e). A debt owed to a creditor in the amount of \$531 has been paid in full. (Tr. p. 42 and Applicant's Exhibit A.) 1(f). A debt owed to a creditor in the amount of \$7,000 is currently under negotiations with the debt management company and when the settlement amount is reached, the Applicant will pay the debt. (Applicant's Exhibit C.)

A letter from the Applicant's supervisor dated September 17, 2012, reflects that he is considered to be a trustworthy employee and a top-ranked IT technician. He is professional, has a strong work ethic and has instilled the highest confidence in his peers, clients and supervisor. He is highly recommended for a security clearance. (Applicant's Exhibit E.)

A letter from the security manager, who has known the Applicant for many years indicates that the Applicant displays a high level of trust and competence which he displays on a daily basis. He is aware of the Applicant's financial problems of the past and that he has been working diligently to correct them. (Applicant's Exhibit E.)

A letter from a coworker indicates that the Applicant is a valuable professional, who is competent in his duties, and consistently maintains a positive attitude and a desire to go the extra mile for each and every customer. The Applicant is considered the "go to" person whenever the coworker needs assistance. (Applicant's Exhibit E.)

The Applicant presently lives with his fiancé, they have six children between the two of them, two children they have had together. He testified that they are very financially responsible. They live within their means and follow a strict financial budget. At the end of the month the Applicant has about \$300 left in discretionary funds. (Tr. p. 56.) The Applicant further explained that although he is still married to his previous wife, he has every intention to divorce her but has had difficulty determining her whereabouts. He has placed a credit protection alert on his accounts so that she cannot use his credit in the future.

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;

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 the Applicant became financially indebted due to his wife at the time, who was financially irresponsible. This situation or circumstance was, for the most part, beyond the Applicant's control. His wife had bad credit when he met her that he was not aware of. After they married, she abused her husband's credit. Since then the Applicant has moved on to another woman, and is currently engaged to a financially responsible person. He has been working hard to resolve his delinquent debts. He has hired a debt management company to assist him in resolving his debt. He has paid off the smaller debts, and is currently in negotiations to settle the larger ones. He has set up an escrow account that he is contributing to monthly in order to have sufficient funds available to pay his remaining delinquent debts.

This was obviously an isolated incident that will not recur since the Applicant is now in a much more stable relationship with a responsible woman, and understands that he must remain fiscally responsible at all times if he is to hold a security clearance. He has made a good-faith effort to resolve his past due indebtedness. He has paid all but three of his delinquent debts off completely. Those debts that he has not paid in full, he plans to pay off as soon as they are settled by his debt management company. He has not incurred any new debt and is living within a budget. He has clearly demonstrated that he can properly handle his financial affairs. There is clear evidence of financial rehabilitation. 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. I have considered his favorable character reference letters as well as his impeccable military career. (Applicant’s Exhibit E.) 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 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.

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

