



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 11-05910
)
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:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on August 26, 2010. (Government Exhibit 2.) On May 8, 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 27, 2012, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on August 3, 2012. A notice of hearing was issued on August 8, 2012, scheduling the hearing for September 20, 2012. On September 12, 2012, the hearing was rescheduled for September 18, 2012. 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. The Applicant also testified on his own behalf. The record remained open until close of

business on September 25, 2012, to allow the Applicant to submit additional documentation. The Applicant submitted two Post-Hearing Exhibits, consisting of twenty-two pages, referred to as Applicant's Post-Hearing Exhibits A and B, which were admitted without objection. The official transcript (Tr.) was received on September 26, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 54 years old, and married with two children. He has a Bachelor's Degree in Web Technology and Computer Arts. He is employed with a defense contractor as a Web Technologist 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), 1(b), and 1(e), as set forth in the SOR. He denies allegations 1(c), and 1(d). Credit Reports of the Applicant dated October 28, 2000; September 1, 2010; January 28, 2012; and September 15, 2012; reflect that the Applicant is indebted to a number of creditors set forth in the SOR, in an amount totaling at least \$30,000. (Government Exhibits 1, 3, 4 and 6.)

The Applicant began working for a defense contractor in June 2000, and first obtained a security clearance at the time. He has never received a security violation or infraction.

Prior to 2009, the Applicant had good credit and he paid his bills on time. His financial problems began in 2009. (Tr. p. 34.) He explained that when his wife lost her job, she had been earning \$55,000 annually, and their credit was overextended. She was unemployed for almost two years. By 2010, the Applicant had problems making their credit card payments, and contacted a law firm that he saw on television for assistance. It was recommended that he file for bankruptcy. (Tr. p. 38.) In preparation for bankruptcy, he followed their legal advice, stopped paying their credit card bills and stopped using credit. The Applicant then applied for a loan modification on his home.

The law firm then recommended that the Applicant stop the bankruptcy proceedings so not to jeopardize their loan modification. (Tr. p. 40.) The law firm then went bankrupt and could no longer provide assistance to the Applicant, even though the Applicant had paid them \$3,000 for their services and the filing fee of \$325. The

Applicant was returned \$500 of his fee. He decided to wait to hear from his creditors and negotiate them one by one on his own. (Tr. p. 40.) The Applicant claims that in 2010, he paid off seven of his creditors that are not alleged in the SOR. (Tr. p. 41.) He used money he received from an inheritance from his aunt. His mother then passed away and he received more money that he used to pay debts.

The following delinquent debts set forth in the SOR became owing and the Applicant has not had the money to pay the debts;

1.(a) The Applicant is indebted to a bank for a delinquent credit card in the amount of \$13,000. The Applicant testified that the bank has filed suit against the Applicant and is seeking a judgment. The matter is scheduled for hearing for December 2012. The Applicant testified that there is a good chance that he may file bankruptcy and discharge the debt. (Tr. p. 45.)

1.(b) The Applicant is indebted to a bank for a delinquent credit card in the amount of \$16,000. The bank has filed suit against the Applicant and is seeking a judgment. The Applicant testified that he may file bankruptcy and discharge the debt. (Tr. p. 47.)

1.(c) The Applicant was delinquently indebted to a creditor for a student loan for his daughter in the amount of \$20,000. The Applicant was the originator on the loan and his daughter was the co-signor. The debt has been placed into deferment and is no longer delinquent. (Applicant's Exhibit E.)

1.(d) The Applicant's credit report indicated a delinquent debt to bank for a mortgage loan in the amount of \$81,050. The Applicant contends that the bank made a mistake as it should not have been reported as delinquent on his credit report when he was in the midst of a mortgage modification and was making payments according to bank agreement. A letter from the creditor confirms the error. (Tr. pp. 53 - 54 and Applicant's Exhibit B.)

1.(e) The Applicant is indebted to a creditor for a delinquent credit card in the amount of \$1,071. The debt remains owing. (Tr. p. 62.)

The Applicant testified that he is current on his regular monthly expenses and is living within his means. At the end of the month, he has approximately \$400 left, but somehow it is used and he has no money for savings. He has about \$90,000 in his 401(k) and other investments. (Tr. pp. 65 -66.)

The Applicant indicates that his home modification was approved and although his payments actually increased, he is paying more towards the principal. (Tr. p. 69.) He also learned that he owes about \$15,000 on a delinquent credit card that was not alleged in the SOR. About a month ago the Applicant contacted a bankruptcy attorney and retained him to file bankruptcy on his behalf that is planned for December 2012. (Applicant's Post-Hearing Exhibit B.) He borrowed \$2,400 from his 401(k) to pay the

legal fees. The Applicant is not sure whether it will be a Chapter 7 or a Chapter 13. (Tr. p. 76.) The Applicant contends that he has made a lifestyle change. He states that he has learned a lesson and that he will never financially overextend himself again. (Tr. p. 74.)

Applicant's performance appraisals for the periods from February 2009 to March 2010, February 2010 to March 2011, and February 2011 to March 2012, reflects overall ratings that the Applicant "consistently meets" the expectations of the job. (Applicant's Post-Hearing Exhibit A.)

Five letters of recommendation submitted on behalf of the Applicant by his current supervisor, past supervisor, a family friend, and two coworkers indicate that they consider the Applicant to be honest, trustworthy, and a team player. He is considered to be a gracious and kind person who is a good and loyal citizen of the United States. (Applicant's Exhibit A.)

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). The 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 his control started his financial problems. In 2008, his wife lost her job and they had overextended themselves financially with excessive credit card debt. In 2010, they hired a law firm to assist them in resolving their debts, but this was not successful as the firm went bankrupt. More recently, the Applicant's wife has been working and the Applicant inherited money from family that he has used to pay some of his debts. However, none of the debts listed in the SOR were paid and he remains excessively indebted. He currently owes approximately \$30,000 in delinquent debt alleged in the SOR. He has also recently learned of another outstanding credit card debt owed to a creditor in the amount of \$15,000. He states that he has made a lifestyle change, and plans to file bankruptcy to discharge his debts in the future.

The Applicant has not done enough to show that he is fiscally responsible. Although he seems to understand the importance of paying his bills on time, he simply has not been able to do so. At this time, 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.

Under the particular circumstances of this case, the Applicant has not met his burden of proving that he is worthy of a security clearance. Admittedly, the law firm he hired in 2010 to assist him in resolving his debts did delay his ability to resolve his indebtedness when they went bankrupt. Sufficient time has passed that would have given him the opportunity to address his delinquent debts more efficiently. Although he

has recently hired an attorney to file bankruptcy in December 2012, his financial situation remains dismal. 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. Assuming that he continues to work to resolve his debts, and then shows that he has not acquired any new debt that he is unable to pay, he may be eligible for a security clearance in the future. However, not at this time. 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. Mitigating Condition 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, but is not controlling. Accordingly, I find against 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.:	For the Applicant.
Subpara. 1.d.:	For the Applicant.
Subpara. 1.e.:	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