



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 11-06937
)
)
Applicant for Security Clearance)

Appearances

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

September 13, 2012

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on May 30, 2009. (Government Exhibit 1.) On April 4, 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 April 30, 2012, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on July 2, 2012. A notice of hearing was issued on July 3, 2012, scheduling the hearing for July 25, 2012. The Government presented six exhibits, referred to Government Exhibits 1 through 6, which were admitted without objection. The Applicant presented one exhibit, referred to as Applicant's Exhibit A, which was admitted without objection. The Applicant called two witnesses and testified on his own behalf. The official transcript (Tr.) was received on August 3, 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 59 years old, married and has one adult child. He has a Bachelor's Degree in Business Management. He is employed with a defense contractor as a Logistics Planner 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.

The Applicant has worked in some capacity for the United States Government for the past thirty-nine years. He served honorably in the United States Air Force from July 1972 and August 1977. He then worked for the Government as either a Federal civil servant or for a Government contractor. From 1984 to 2003 he worked overseas. From 2003 to 2006 he worked in the states. He then retired, which significantly reduced his income. He planned on returning to an overseas area, but in 2007 he was hired by his current employer in the states with whom he is presently employed.

During most if not all of his Government service the Applicant received an annual living quarters allowance that covered the cost of his rent and utilities. The Applicant believes that this attributed to his lack of good budget skills required to properly manage a household. (See Applicant's Answer to SOR.) In addition, like many of his military friends were doing, the Applicant decided to buy a real estate investment and rent it out. This was unsuccessful and he tried to sell the property, but was unable find a buyer. In 2006/2007, the real estate market crashed and he found himself upside down on two home loans. He was not prepared for the expenses and could not afford two mortgages. He also fell behind on his credit card bills. Realizing that he needed to do something to address his financial situation, in August 2008, the Applicant consulted with an attorney who advised him to file for Chapter 7 bankruptcy. In November 13, 2008, the Applicant filed for Chapter 7 Bankruptcy protection. (Government Exhibit 3.) An order of discharge was issued on May 15, 2009, discharging approximately \$356,000 in liabilities. Although he listed his mortgage in the bankruptcy he tried to modify the loan in order to keep one of the houses.

From 1984 to 2003, during his work overseas, the Applicant worked as a Supply Management Officer. In that capacity he approved the acquisition of supplies and services with an annual supply budget of 8 million dollars. He stated that every purchase was supported by approved work orders and every inspection by local auditors resulted in excellent or highly satisfactory findings. As a result of a peninsula wide investigation, after returning to the states and starting another job where he was assigned to Iraq, in July 2008 the Applicant's overseas tour was cut short to answer a Federal indictment for Structuring Financial Transactions to Evade Reporting Requirements. The Applicant explained that while stationed overseas he would take his employment income (all legitimate earnings) and deposit the money into his overseas bank account. When he returned to the United States in September 2003, he transferred the money to his account in the United States. He would transfer less than \$10,000 at a time over the course of two to three months to avoid the tax laws. He transferred a total of \$60,000 into the United States bank account. The Applicant testified that it was upon the advice of the bank manager that he did this in order to avoid having to file documentation. The Applicant pled guilty to two counts of Structuring Financial Transactions to Evade Reporting Requirements and received a two years debarment, one year probation and was ordered to pay \$3,000 restitution. The Applicant has complied with the court's sentencing conditions, including the one year supervisory probation period, which ended in March 2010, and he has paid the \$3,000 fine in full. The Applicant claims that he was not aware of the United States bank laws.

The Applicant has been current with all of his debts since filing for Bankruptcy. He has completed an online credit counseling course and plans to follow a financial budget. His current net income is \$3,000 monthly. In addition to financially supporting his wife, he is currently supporting his son, who is unemployed, two grandchildren and a daughter-in-law. (Tr. p. 51.) During his eighteen years overseas, he tried to save money. He has \$62,000 in his Thrift Savings Plan, \$30,000 in cashier checks, and \$40,000 in a savings account.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for a security clearance because he has engaged in conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules and regulations that can raise questions about an individuals reliability, trustworthiness and ability to protect classified information.

The Applicant admitted the single allegation set forth in the SOR under this guideline. (See the felony conviction discussed above.)

During his thirty-nine years of government service, the Applicant has received numerous awards and commendations for outstanding job performance. He received several awards and commendations during his military service. (Government Exhibit 2.) He also received certificates of appreciation and awards in recognition of his civilian Federal service. (Applicant's Exhibit A.) During this period, he states that he has never

committed a security violation nor has his loyalty or service to the United States ever been questioned.

Two witnesses testified on behalf of the Applicant. His division manager and immediate supervisor, and his human resource officer, both of whom have daily contact with the Applicant, testified that he is extremely reliable and trustworthy. He is also a person of high integrity and recommended for a position of trust. (Tr. pp. 84-86 and 94-96.)

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;

19.(c) a history of not meeting financial obligation; and

19.(d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust.

Conditions that could mitigate security concerns:

20.(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

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 under control; and

20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Condition that could raise a security concern:

16.(c) Credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, and other characteristics indicating that the person may not properly safeguard protected information.

Conditions that could mitigate a security concern:

17.(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

17.(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

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 and personal conduct, 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) and engaged in poor personal conduct (Personal Conduct). 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 poor financial planning, untimely real estate investments, and a 50 percent income reduction in July 2006 when the Applicant retired, contributed to his financial difficulties. Since he discharged his delinquent debts, he has resolved his indebtedness and remained current with his bills.

The Applicant has resolved his delinquent indebtedness. When he realized that he could not afford to pay his bills, he consulted an attorney, filed bankruptcy and discharged his debts. Since then he has been remained current on his bills and has incurred no new debt. He explained that this was an isolated situation that will not recur. He states that he would never have gotten into the financial situation if he had not made an untimely real estate investment. He understands the importance of paying his bills on time and plans to continue to live within his means in the future.

The evidence also demonstrates that the Applicant was naive, uninformed and ignorant when he circumvented the United States bank laws. It does not appear that he had any criminal intent. When he structured his financial transactions overseas that were ultimately transferred to his United States bank account, he obviously did so to evade reporting requirements, not realizing the magnitude of his actions. He now understands how serious his conduct was, as it was criminal and he was convicted of a felony. He has convincingly expressed that it will never happen again and has engaged in no further criminal conduct since then. He has learned a hard lesson and realizes that he must be careful to follow all applicable bank laws. Thus, there is sufficient evidence of financial rehabilitation. The Applicant has 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 met his burden of proving that he is worthy of a security clearance. He has a concrete understanding of his financial responsibilities and has sufficiently addressed his delinquent debts in the SOR. Thus, it can be said that he has made a good-faith effort to resolve his past-due indebtedness. He has shown that he is or has been reasonably, responsibly or prudently addressing his financial situation. He is current with all of his monthly expenses and has no delinquent debts. 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*; 19.(c) *a history of not meeting financial obligations*; and 19.(d) *deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust* apply. However, Mitigating Conditions 20.(a) *the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*; 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 under control*; and 20.(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* are also applicable. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

Under Guideline E, (Personal Conduct), Disqualifying Condition 16.(c) *credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, and other characteristics indicating that the person may not properly safeguard protected information* applies. Mitigating Conditions 17.(c) *the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*; and 17.(d) *the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur* also apply. Accordingly, I find for the Applicant under Guideline E (Personal Conduct).

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, 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. It mitigates the negative effects of his financial indebtedness and poor personal conduct 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 Paragraphs 1 and 2 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.

Paragraph 2: For the Applicant.
Subpara. 2.a.: 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