



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



In the matter of:)
)
-----) ISCR Case No. 11-07013
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Department Counsel
For Applicant: Barry M. Sax, Attorney At Law

November 29, 2012

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (E-QIP) on June 7, 2010. (Government Exhibit 2.) On July 11, 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 August 2, 2012, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on September 7, 2012. A notice of hearing was issued on September 11, 2012, and the hearing was scheduled for October 17, 2012. At the hearing the Government presented 9 exhibits, referred to as Government Exhibits 1 through 9, which were admitted without objection. The Applicant presented nine exhibits, referred to as Applicant's Exhibits A through I, which were also admitted into evidence. He also testified on his own behalf. The official transcript (Tr.) was

received on October 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 54 years old and married. He has a Master's Degree. He is employed with a defense contractor as a Senior Program Manager 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 denied each of the allegations set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated January 30, 1997; June 19, 2010; February 29, 2010; and October 9, 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 \$73,000. (Government Exhibits 1, 3, 4 and 9.)

The Applicant served in the United States Air Force from 1976 to 1980. He then joined the Air National Guard where he served for about five years. Since then, he has worked various jobs. He has worked off and on in the defense industry, which was interrupted by periods of lay-offs. He also went to school and completed two college degrees. He worked part-time as a financial planner for about two years before he decided in January 2008, to start his own financial planning business and work full time. The business had no sustained success, and in January 2009, he started having financial problems and fell behind on his credit card bills. For seventeen months, the Applicant was unable to find employment. During this period, he accumulated excessive credit card debt that he was unable to pay. His credit card accounts were sent to collection and then charged off.

In June 2010, he began working for his current employer. He contacted a credit counseling agency to assist him in resolving his delinquent debts. (Applicant's Exhibit I.) Since then, he has paid his bills and resolved his past due indebtedness. A debt owed to a bank for an account that had been charged off in the amount of \$14,928 has been settled. (Applicant's Exhibit A.) A debt owed to a bank for an account that has been charged off in the amount of \$12,387.00 has been settled. (Applicant's Exhibit B.) A debt owed to a bank for an account that had been placed into collection in the amount of \$20,072 has been settled. (Applicant's Exhibit C.) A debt placed into collections in the amount of \$16,428 has been settled. (Applicant's Exhibit D.) Each of the debts listed in the SOR have either been paid in full or resolved through a negotiated

settlement for less than what was owed. (Government Exhibit 5.) Applicant's most recent credit report dated October 11, 2012, reflects these pay-offs or settlements. (Applicant's Exhibit G.)

His personal financial statement dated April 11, 2012, indicates that after paying all of his monthly expenses and bills he has about \$961.00 in discretionary monies left at the end of the month. (Applicant's Exhibit E.) His annual salary is now \$112,000. His wife earns about \$30,000 annually. The Applicant has now paid off all of his delinquent debts of the past. He has incurred no new debts and is current with all of his bills. He has only one credit card that he uses for emergencies. He is also saving money in a 401(k) and currently has about \$39,000. He is downsizing his lifestyle to prevent any future problems.

Numerous letters of recommendation from the Applicant's supervisor, family, coworkers and friends attest to his professionalism, conscientiousness, high moral character, integrity, and strong work ethic. He is considered honest, trustworthy, dedicated and reliable and is recommended by all for a security clearance. (Applicant's Exhibit F.)

Applicant has received a number of awards and certificates of achievement for his excellent work product. (Applicant's Exhibit H.)

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 delinquently indebted only after his own business failed and he was unemployed for a year and a half. Since he gained employment in June 2010, he earns sufficient income to pay his bills and has promptly resolved his past due indebtedness.

This was an isolated incident that will not recur since the Applicant is now working full time and understands that he must remain fiscally responsible if he is to hold a security clearance. He has made a good-faith effort to resolve his past due indebtedness. He has resolved his delinquent debts. He has not incurred any new debt that he cannot afford to pay. 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, current employment awards, as well as his past 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. It mitigates 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.

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