



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



In the matter of:)
)
-----) ISCR Case No. 11-09469
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Department Counsel
For Applicant: *Pro se*

May 8, 2012

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on August 18, 2010. (Government Exhibit 6.) On November 3, 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 December 6, 2011, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on February 13, 2012. A notice of hearing was issued on March 1, 2012, and the hearing was scheduled for March 28, 2012. At the hearing the Government presented thirteen exhibits, referred to as Government Exhibits 1 through 13, which were admitted without objection. The Applicant presented seven exhibits, referred to as Applicant's Exhibits A through G. He also testified on his own behalf. The record remained open until close of business on April 9, 2012, to allow the

Applicant the opportunity to submit additional documentation. The Applicant submitted four Post-Hearing Exhibits on April 9, 2012, which were admitted without objection, and are referred to as Applicant's Post-Hearing Exhibits 1 through 4. The official transcript (Tr.) was received on April 11, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

REQUEST FOR ADMINISTRATIVE NOTICE

Department Counsel requested that I take administrative notice of the state Anti-Deficiency statute. (Tr. pp. 15 -17.) The Applicant had no objection. (Tr. p. 17.) The attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below

FINDINGS OF FACT

The Applicant is 49 years old and unmarried. He has a Bachelor's Degree from the United States Air Force Academy. He is employed with a defense contractor 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, except allegations 1(j), 1(k), 1(n), and 1(o). Those allegations he denied, as he believes he has paid these debts in full. Credit Reports of the Applicant dated March 27, 2003; September 14, 2010; February 4, 2011; August 8, 2011, and March 21, 2012, reflect that the Applicant was at one time indebted to each of the creditors set forth in the SOR, in an amount totaling in excess of \$155,000. (Government Exhibits 2, 7, 8 10 and 13).

The Applicant attended the United States Air Force Academy and graduated with a Bachelor's Degree in 1986. That same year, he got married, and he had a daughter in 1988. In 1994, he and his wife separated. His wife stayed in their original residence and the Applicant moved. The expense of maintaining two households became difficult. However, he continued to provide financial support to his wife and his daughter. In 1996, he and his wife divorced. He completed his military service in July 1997, and began working for his current employer in 1998.

In 2005, the Applicant purchased a condominium as his primary residence and a used vehicle for his transportation. He thought at that time that he could comfortably afford them. Several expenses occurred that he had not planned for. In 2006, the variable rate mortgage loan on his condominium adjusted to the point that he could no longer afford the payment. The home owners association also imposed a special assessment of \$2,500 that further aggravated his financial situation. His bills were out of control and he experienced a period of depression that required medication. During this period, he was not focused and did not take care of his bills. He soon realized that he could no longer afford the condominium. After two and a half months in mortgage arrearage, the Applicant packed, moved out of the condo, and left the keys in the residence. The house was ultimately foreclosed upon. The Anti-deficiency statutes in the state where the condominium was located and foreclosed upon protect the Applicant from liability in this instance. The lender took back the house, and there is no deficiency judgment against the consumer. Thus, the lender only has the right of recourse against one act, either the money or the property, not both. (See, State Anti-Deficiency statute.)

In December 2001, he contacted a credit counseling service to help him resolve his debts. They recommended that he pay the smaller debts first and then tackle the larger ones. He has followed their recommendation and since then has been diligently working toward resolving his delinquent debts.

The following debts listed in the SOR became delinquent: 1(a). A debt owed to the Internal Revenue Service in the amount of \$12,816 has been paid through garnishment. (Tr. pp. 40 - 41.) 1(b). A debt owed to a creditor in the amount of \$4,432 is being paid in monthly payments of \$582. (Tr. p. 42 and Applicant's Exhibit A.) 1(c). A debt owed to a creditor in the amount of \$131 has been paid off. (Tr. p. 43.) 1(d). A debt owed to a creditor in the amount of \$2,105 is being paid in monthly payments of \$200. (Tr. p. 44.) 1(e) and 1(f). Debts owed to a creditor in the amounts of \$1,117 and \$10,482 and are being paid in monthly payments of \$255. (Tr. p. 45 and Applicant's Post-Hearing Exhibit 2.) 1(e). and 1(g). are one in the same debt. 1(h). A debt owed to a creditor in the amount of \$1,878 has been paid off. (Tr. p. 46 - 47.) 1(i). A debt owed to a creditor in the amount of \$9,856 is being paid in monthly payments of \$200. (Tr. p. 47.) 1(j). A debt owed to a creditor in the amount of \$1,092 is under dispute. (Tr. p. 49.) 1(k). A debt owed to a creditor in the amount of \$646 has been paid off. (Applicant's Post-Hearing Exhibit 1.) 1(l). A debt owed to a creditor in the amount of \$1,477 has been paid off. (Tr. pp. 50.) 1(m). A debt owed to a creditor for a mortgage loan in the amount of \$112,624 on a house that was foreclosed upon is being paid in monthly payments of \$846. (Applicant's Post-Hearing Exhibit 3 and Tr. pp. 50 - 52.) 1(n) and 1(k) are one in the same debt and have paid in full. 1(o). A debt owed to a creditor in the amount of \$288 has been paid off. (Tr. p. 54 - 55.) 1(p). A debt owed to a creditor in the amount of \$168 has been paid off. (Tr. 55.) 1(q). The Applicant has had difficulties locating the creditor owed a debt in the amount of \$2,030. He plans to pay it as soon as possible. (Tr. p. 55.) 1(r). A debt owed to a creditor in the amount of \$535 has been paid off. (Tr. p. 56.) 1(s). A debt owed to a creditor for a first mortgage

loan in the amount of \$220,000 for a house that was foreclosed upon has been resolved. (Tr. p. 50.)

The Applicant currently earns approximately \$161,000 annually. He contributes between \$200.00 and \$300.00 monthly to assist his daughter with her college tuition. His personal financial statement dated March 28, 2012, indicates that after paying his regular monthly expenses, he has about \$1,000 left in discretionary monies to use to continue resolving his delinquent debts. (Applicant's Exhibit A.) He has incurred no new debts.

A letter of recommendation from the Applicant's direct supervisor for the past four years indicates that the Applicant is highly respected and considered an excellent performer on the job. He is technically astute, proactive in taking actions to maintain customer satisfaction, an effective manager to his team, has excellent job planning skills, great at coordinating and executing efforts to completion, and makes excellent technical and programmatic decisions. He is also said to be a strong and consistent performer in budget and personnel planning as well as identifying and proposing new or modified work activities. (Applicant's Exhibit B.)

Applicant's performance appraisals for the years 2007 through 2011, reflect ratings from, "exceeds performance requirements," to "outstanding," in every category. (Applicant's Exhibits C, D, E, F and G.)

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 circumstances largely beyond his control, namely his divorce and its related expenses, as well as a temporary bout of depression, contributed to his financial problems. Admittedly, following his divorce, he failed to satisfy his debts in a responsible manner. For some time, he mismanaged his finances and mistakenly thought he could afford to buy expensive things for himself, including a condominium and a vehicle. Unfortunately he was wrong. Since then, he has taken responsibility for the debts, and has been working diligently within his means to resolve them.

This was an isolated incident that will not recur since the Applicant now has a clear head and understands that he must remain fiscally responsible if he is to hold a

security clearance. For the past year, he has made a good-faith effort to resolve his past due indebtedness. He has addressed each debt listed in the SOR. He has contacted a credit counselor who advised him to pay the smaller debts first, which he has done. He has either paid off the debts in full, or set up a payment plan that he is following. He has not incurred any new debt. He understands the importance of paying his bills on time and living within his means. 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 also considered his favourable performance appraisals as well as his supervisor's complimentary letter. 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.
Subpara. 1.g.:	For the Applicant.
Subpara. 1.h.:	For the Applicant.
Subpara. 1.i.:	For the Applicant.
Subpara. 1.j.:	For the Applicant.
Subpara. 1.k.:	For the Applicant.
Subpara. 1.l.:	For the Applicant.
Subpara. 1.m.:	For the Applicant.
Subpara. 1.n.:	For the Applicant.
Subpara. 1.o.:	For the Applicant.
Subpara. 1.p.:	For the Applicant.
Subpara. 1.q.:	For the Applicant.
Subpara. 1.r.:	For the Applicant.
Subpara. 1.s.:	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