



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



In the matter of:)
)
-----) ISCR Case No. 12-00114
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Ronald P. Ackerman, Attorney At Law

December 12, 2013

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on September 11, 2011. (Government Exhibit 1.) On May 21, 2013, the Department of Defense (DoD), 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 July 12, 2013, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on August 20, 2013. A notice of hearing was issued on September 9, 2013, scheduling the hearing for October 29, 2013. The Government presented nine 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 without objection. The Applicant also testified on his own behalf. The record remained open until close of business on November 8, 2013, to allow the Applicant to submit additional

documentation. The Applicant submitted one Post-Hearing Exhibit, consisting of twenty-eight pages, referred to as Applicant's Post-Hearing Exhibit A, which was admitted without objection. The official transcript (Tr.) was received on November 8, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 50 years old, and divorced with four children. He has a bachelor's degree. He is employed with a defense contractor as a Deputy Program Manager/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 admitted allegations 1(b), 1(c), 1(d), 1(f), 1(g), 1(k), as set forth in the SOR. He denies allegations 1(a), 1(e), 1(h), 1(i), and 1(j). Credit Reports of the Applicant dated April 18, 2005; September 17, 2011; February 19, 2013; April 30, 2013; and October 28, 2013, reflect that the Applicant is indebted to each of the eleven creditors set forth in the SOR, in an amount totaling at least \$185,000. (Government Exhibits 4, 5, 6, 7, 8 and 9.) Applicant has worked for the defense industry for almost 30 years and has held a security clearance since June 1984.

Applicant's first marriage was from February 1994 to February 2004. He has one adult son from the marriage, and complied with the court order to pay spousal and child support, which he completed. In March 2005 he met his new wife and they were married in July 2007. She had a son from a previous marriage who was born with a deformed esophagus. He is now the Applicant's stepson. She and the Applicant had two biological children of their own, a 6 year old girl and a 4 year old boy. In February 2007, they purchased their dream house that cost 1.6 million dollars. At that point, Applicant's finances were extended and tight but he felt he and his wife could handle the bills. In 2008 his wife got pregnant with a high risk pregnancy and had to stop working. This reduced their income about \$35,000.

In 2008, a series of other circumstances contributed to his financial problems. Applicant's stepson became ill. This required his wife to stay at home to care for him instead of work. Applicant described a serious medical emergency that occurred in 2008, when his stepson choked on a hot dog. This incident resulted in costly medical care and surgeries. Applicant's insurance covered about 80% of the bill of about

\$750,000. Applicant paid \$50,000 out of pocket, and had to hire a nurse to help care for his stepson. Applicant could no longer afford his lifestyle and he started falling behind on his mortgage payments. Applicant applied for a loan modification but that was unsuccessful, only to find out one day that his house had been put up for auction. In July 2009 Applicant filed for Chapter 11 bankruptcy in hopes of preventing the sale of his home. 1.(k)) (Government Exhibit 3.) Applicant was ordered by the court to pay the first on the house and whatever he could afford on the second until a payment plan to his creditors was arrived at. In order to get out of the bankruptcy, as he thought it looked bad to the Defense Department, his attorney advised him to short sale the house, which he did in September 2010. Applicant believes he lost \$400,000 from the short sale of the house.

In March 2011 Applicant's wife filed for a legal separation. In April the court ordered Applicant to pay spousal and child support in the amount of \$5,200 monthly, which also includes his wife's attorney fees. (Applicant's Exhibit B.) Applicant's wife obtained a restraining order against him, and he was required to pay for where she and the children were living while he moved into a hotel. This was costly. Applicant is also currently paying the Internal Revenue Service for back taxes owed for 2007 in the amount of about \$20,000. (Applicant's Exhibit H.) Applicant has not had any discretionary monies available to pay his delinquent debts.

After getting back together and then separating again, Applicant eventually filed for divorce in January 2013. But before doing so, in 2012, when they were together, and as his financial indebtedness was mounting, Applicant purchased a pre-owned top of the line BMW for his wife with a monthly payment of \$906 for a total of \$46,000. (Tr. P. 102.) In April 2013, Applicant was ordered to pay child support and attorney fees for his wife's attorney. (Applicant's Exhibit C.) Applicant is presently in the midst of a family law matter scheduled for trial in December 2013 and is uncertain as to what his final legal obligation will be.

Applicant has paid one delinquent debt owed to a creditor listed in 1(h) of the SOR in the amount of \$233. (Tr. pp. 73-74 and Applicant's Exhibit G.) Another delinquent debt owed to a creditor for a consolidation loan listed in 1(j) of the SOR in the amount of \$22,204 was settled and resolved by the law firm that is assisting him with his debts. (Applicant's Exhibit E.)

The following delinquent debts set forth in the SOR remain owing and delinquent; 1.(a) The Applicant is indebted to a creditor in the amount of \$4,637. Applicant does not know how he incurred this debt or what it is for. 1.(b) The Applicant is indebted to a creditor in the amount of \$27,664 for a vehicle (a Land Rover) that was voluntarily repossessed. 1.(c) The Applicant is indebted to a creditor in the amount of \$17,127 for a personal line of credit. 1.(d) The Applicant is indebted to a creditor in the amount of \$15,419 for a personal line of credit. 1.(e) The Applicant is indebted to a creditor in the amount of \$13,578 for a baby grand piano that was repossessed. 1.(f) The Applicant is indebted to a creditor in the amount of \$34,710 for a vehicle (a Porsche) that was voluntarily repossessed. 1.(g) The Applicant is indebted to a creditor

in the amount of \$50,930 for a motor boat that he purchased. Applicant has paid this debt. (Tr. pp. 73-74 and Applicant's Exhibit G.) 1.(i) The Applicant is indebted to a creditor in the amount of amount of \$831. Applicant believes this is a delinquent medical bill.

Applicant currently earns \$230,000 annually. (Tr.p. 87.) His personal financial statement dated July 13, 2013, indicates that after paying his regular monthly expenses he has \$98.00 left at the end of the month. (Applicant's Exhibit I.) His intention is to work with his creditors and clean up his credit report. About a year ago he hired a law firm to assist him in resolving his debts. (Tr. p. 76.)

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 obligations.

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. Namely, Applicant's stepson's medical issues that resulted in \$50,000 in out of pocket expenses and his wife's high risk pregnancy; and his separation and eventual divorce and the related expenses. His decision to purchase his dream home further tightened his financial situation. Despite the fact that he is currently paying legal obligations, the Applicant's future legal obligations are uncertain, and he has not been able to pay his delinquent debts or otherwise resolve the debts that are of concern to the Government in this case Applicant has only paid two of his delinquent debts. The rest remain owing.

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. 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. In this case, Applicant's finances are stretched and he has not been able to pay his delinquent debts, which remain outstanding. 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.:	Against the Applicant.
Subpara. 1.d.:	Against the Applicant.
Subpara. 1.e.:	Against the Applicant.
Subpara. 1.f.:	Against the Applicant.
Subpara. 1.g.:	Against the Applicant.
Subpara. 1.h.:	For the Applicant.
Subpara. 1.i.:	Against the Applicant.
Subpara. 1.j.:	For the Applicant.
Subpara. 1.k.:	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