



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-05054
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace Lei, Esquire, Department Counsel
For Applicant: *Pro Se*

March 18, 2008

Decision

LOKEY-ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on May 30, 2006. On July 27, 2007, 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 in writing on August 13, 2007, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on October 11, 2007. A notice of hearing was issued on January 29, 2008, scheduling the hearing for February 26, 2008. At the hearing the Government presented eight exhibits, referred to as Government Exhibits 1 through 8. The Applicant presented four exhibits, referred to as Applicant's Exhibits A through D. He also testified on his own behalf. The official transcript (Tr.) was received on March 5, 2008.

FINDINGS OF FACT

The Applicant is 61 years old and has a Bachelor's and Master's Degrees in Engineering. He is employed by a defense contractor as a Technical Consultant. He is seeking to obtain a security clearance in connection with his 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 to engage in illegal acts to generate funds.

Over the past ten to twelve years, the Applicant has been caught in a chain of events that have caused his current financial setback and delinquent financial situation. Prior to 1995, he and his wife were accustomed to a two income home. They paid their bills on time and lived a comfortable life. In 1995, the Applicant and his wife separated and he experienced significant periods of serious financial difficulty. In 1997, they divorced and the Applicant was left with all of the debt from the marriage, which included mortgages on properties. Unbeknownst to the Applicant his wife had ran up \$50,000.00 in credit card debt that he also had to pay. His wife received a house that was free and clear of debt.

To further complicate his financial situation, in 1998, he was diagnosed with prostate cancer and underwent surgery and radiation. He is now physically restricted from doing certain types of work. (Tr. p. 32). He applied for over 100 jobs but his search for suitable employment was unsuccessful. To pay his debts, the Applicant liquidated all of assets, except for a house he owns in another state. He sold a piece of property he owned, (59 acres), sold personal property of any value, cashed in his retirement accounts and reduced his living expenses (eliminating his health insurance) and relied on his credit cards to pay his living expenses. In 2003, when he sold his personal property to pay his debts he did not pay his taxes. By January 2001, the Applicant had run out of money. (See Government Exhibit 3).

In 2001, a consulting company offered him a two year contract. He took the job and later found out that the company was unethical. Eight months later they fired him and the Applicant was forced to sue the company. In 2002, the Applicant received a settlement of \$225,000.00. He used half of the settlement money to pay down his credit card bills. (Tr. p. 60).

In November 2005, the Applicant formed his own company, at the request of the United States military to undertake a research and development study contract that they were anticipating. The Applicant was excited about the opportunity and relied on the anticipation of the contract. He expended significant time, money and energy on the

organization and planning of the project that was not reimbursed. It was expected that the contract had planned funding in excess of \$500,000.00. Throughout this period, although difficult, the Applicant was still making payments on his credit cards. In 2006, through no fault of the Applicant, the project was cancelled, the funds were re-directed and the Applicant was left without employment.

For the past two years, the Applicant has been unemployed. The Applicant has been unable to pay his credit card bills. In an effort to do something about his delinquent financial situation, the Applicant contacted an attorney. He was advised that he would not qualify for Chapter 7 Bankruptcy because he owns a house in another state. On his own, the Applicant contacted the IRS concerning his delinquent tax debt and told them to place a lien on his house. He also wrote letters to each of his creditors and proposed to place with a third party trustee who would auction it off and the proceeds would go to his creditors. (See Applicant's Exhibit C). The Applicant did not receive a response from any of his creditors.

The only significant asset that the Applicant has is his house. He had been hesitant to sell it to pay his credit card debt without knowing where he would work or live in the future.

Recently the Applicant has found part-time work through his new company on a one year assignment for a defense contractor.

The Applicant currently owes each of the eleven debts set forth in the SOR. His strategy is to pay each of them on a case by case basis as they pursue the legal options available to them. A debt to the IRS for a federal tax lien filed against him in October 2006, in the approximate amount of \$32,891.00 remains outstanding. A delinquent debt owed to Bank of America in the amount of \$18,307.00 remains outstanding. A delinquent debt to Bank of America in the amount of \$25,620.00 remains outstanding. A delinquent debt to Bank of America in the amount of \$28,380.00 remains outstanding. A delinquent debt to Chase in the amount of \$18,814.00 remains outstanding. A delinquent debt to Citi in the amount of \$21,035.00 remains outstanding. A delinquent debt to Citi in the amount of \$24,493.00 remains outstanding. A delinquent debt to Citi in the amount of \$8,074.00 remains outstanding. A delinquent debt to Portfolio/MBNA in the amount of \$10,164.00 remains outstanding. A delinquent debt to WFB -NE in the amount of \$7,891.00 remains outstanding. A delinquent debt to WACHOVIA in the amount of \$15,497.00 remains outstanding. (See Applicant's Exhibit D and Government Exhibits 2, 4 and 8 and Tr. pp. 57-58).

A letter of recommendation from an individual who knows the Applicant both on a professional and personal basis, and who was the Government project officer managing the overall project that the Applicant had hoped to get until it was cancelled, indicates that the Applicant is highly trusted and an extremely capable colleague associated with important national defense work for the past 30 years and that he should be granted a security clearance. (See Applicant's Exhibit B).

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Conditions that could raise a security concern:

- 19(a) inability or unwillingness to satisfy debts;
- 19(c) a history of not meeting financial obligations.

Condition 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 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature 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 voluntariness of participation

- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- 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 predicted 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, a security clearance 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 such access 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 that 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 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 Applicant admits that he is presently \$180,000.00 in debt. He has no money to pay his bills and his only asset left is his house that he has not yet sold. Admittedly, he has suffered a series of financial setbacks over the past twelve years. Many of these circumstances have been beyond his control. Namely, his marital separation, divorce, illness, treatment, business downturn, underemployment and unemployment, and project cancellation have all contributed to his present financial situation. Up to this point, he has sold all of his assets to pay his debts except for his house. He has proposed to his creditors that they sell his house at auction and take the proceeds. They have not responded. He is simply waiting for the next shoe to fall.

Under a similar fact scenario where an individual has taken some productive action to resolve his financial indebtedness, and there is a set plan in place, Mitigation 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* could apply. However, under the particular facts of this case, the Applicant has not made even one payment toward any of the eleven debts listed in the SOR, nor has he set up any payment plans to do so.

Applying the Guidelines of DoD directive 5520.6, the Applicant has not started to reduce his delinquent federal tax debt and other excessive credit card debt, and has a long way to go before it is resolved. He has not presented sufficient evidence to demonstrate a track record of financial responsibility or that he has resolved his financial indebtedness. Upon review of his financial statement, it does not appear that he has any disposable income at the end of the month to pay his delinquent debts. Given the large amount of debt that he owes, and the fact that he has not yet made even one payment toward the debt, there is little evidence of financial rehabilitation at this time.

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. None of the mitigating conditions apply. His financial problems remain current, they are not isolated, and the Applicant has not initiated a prompt, good faith effort to repay his overdue creditors or otherwise resolve his debts. Based upon the evidence presented, this Administrative Judge is given no other option than to deny the Applicant's security clearance. 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.

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 under all of the guidelines viewed as a whole, support a whole person assessment of questionable judgement, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard classified information.

This Applicant has not demonstrated that he is trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

On balance, it is concluded that the Applicant has failed to 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 Government's Statement of Reasons.

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.: Against the Applicant.
- Subpara. 1.i.: Against the Applicant.
- Subpara. 1.j.: Against the Applicant.
- Subpara. 1.k.: Against the Applicant.
- Subpara. 1.l.: Against the Applicant.

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge