



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-02123
SSN:-----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace Le'i, Department Counsel
For Applicant: Alexandra Kaan, Esquire

April 28, 2008

Decision

LOKEY-ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaire for Investigative Processing (e-QUIP) on April 21, 2006. On June 27, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 a clearance should be denied or revoked.

The Applicant responded to the SOR on August 3, 2007, and he 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, and the hearing was scheduled for February 29, 2008. At the hearing the Government submitted presented eight exhibits, referred to as Government Exhibits 1 through 8. The Applicant presented twelve exhibits, referred to as Applicant's Exhibits A through L, and testified on his own behalf. Applicant submitted his First Amended Response to the

SOR that was admitted into evidence without objection. (See Applicant's Exhibit D). The official transcript (Tr.) was received on March 19, 2008.

FINDINGS OF FACT

The following Findings of Fact are based on the Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 53 years old and is currently married to a Thai national. He is employed by a defense contractor as a Chief Steward and 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). After a complete and thorough review of the evidence in the record, and upon due consideration of the same, 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 a security clearance because he is financially overextended and at risk to engage in illegal acts to generate funds.

The Applicant explained that he and his first wife were both merchant mariners and jointly earned approximately \$140,000.00 annually. (Tr. p. 64). They paid their bills on time and their credit was excellent. In mid-summer 2000, the Applicant's wife was diagnosed with lung cancer and was unable to work from that point on. The Applicant became the sole supporter of the household. The Applicant's indebtedness became overwhelming and they subsequently lost everything. He tried to work with their creditors but was offered no relief.

Due to her illness, related depression and marital discord, the Applicant and his wife separated in June 2001. He last communicated with her in May or June 2002. In December 2004, the Applicant's wife died. (See Applicant's Exhibit J). It was not until March 2005, that the Applicant learned of his wife's death from a union officer, since they were both members of the same maritime union, and there were questions regarding whether the Applicant's signature had been forged on some particular document.

The SOR alleges eighteen delinquent creditors that total indebtedness in excess of \$70,000.00. In his First Amended Response to the SOR, the Applicant admits in part and denies in part the delinquent debts set forth in allegations 1(a), 1(d), 1(e), 1(g), 1(k), 1(m), 1(n), 1(o), 1(p), 1(q) and 1(r) of the SOR. He admits that the debts were at one time owing, that they were his wife's debts, and that his wife discharged the debts on March 17, 2003, by way of a Chapter 7 Bankruptcy. (See Applicant's Exhibit D). Credit reports of the Applicant dated June 12, 2006; December 5, 2006; and October 11, 2007, reflect each of the delinquent debts listed in the SOR. (See Government Exhibits 2, 3 and 8).

In his First Amended Response to the SOR, he admits, without reservation, that the delinquent debts set forth in allegations 1(b), 1(g), 1(h), and 1(k) are his debts. (See Applicant's Exhibit D). The Applicant admits the debts owed to Asset Acceptance in the amount of \$ 4,119.00, which he claims may be the same debt as Providian, but he is not sure; Macy's in the amount of \$574; a debt owed to MCDP/CBSD in the amount of \$3,410.00; and a debt owed to GEMB/J.C. Penneys in the amount of \$852.00. They total in excess of \$8,000.00.

The Applicant's testimony at the hearing varied dramatically from his written response to the SOR. The Applicant testified equivocally with regard to many of the debts stating that he is not sure whether they are his debts or his wife's debts. He avers that the debt to Asset Acceptance in the amount of \$4,119.00 could be his wife's. (Tr. p. 51). He does not know if the debt to Macy's in the amount of \$574.00 is his debt or not, but that he did have a Macy's credit card. (Tr. p. 53). The J.C Penney debt in the amount of \$852.00 may also be his debt, but he is not sure. The debt to Greentree Financial Corp. in the amount of \$7,718.00 was a debt on the family residence, although he thought it was paid. He is not sure whether the debt in the amount of \$359.00 owed to JJ MacIntyr is his or his wife's. (Tr. 54). He does not recall the debt to MCDP/CBSD in the amount of \$3,410.00 or the debt to NCO Financial in the amount of \$1,624.00. He does not know whether the debt to MBNA in the amount of \$4,031.00 is his, his wife's, or is a joint debt. (Tr. p. 58).

The Applicant avered with more certainty that the following debts are not his debts, but are his wife's debts, since he did not have these accounts; four American Express Accounts in the total amount of \$28,207.00; a debt to Discover card in the amount of \$10,839.00; a debt to Exxon Mobil in the amount of \$269.00; and a debt to Portfolio RC in the amount of \$269.00 (Tr. p. 57).

In May 2007, over a year ago, realizing that his finances were in disarray, the Applicant hired a law firm to help him with his delinquent debt. (See Applicant's Exhibit K). He indicates that their job was to verify the debts listed on his credit report. Once the debts were verified and determined to be his, he would pay them. The Applicant has not received any verification as of yet. (Tr. p. 67).

The Applicant states that he has recently paid off a debt to Westridge Financial in the amount of \$414.00, (Tr. p. 59); a debt to Credit Bur Cen in the amount of \$519.00, even though he admits that it was his wife's debt (Tr. p. 52); and a debt to Providian Bank in the amount of \$3,456.00 (Tr. p. 58). He presented no documentation to substantiate these payments.

A copy of a credit card debit on January 16, 2008, shows that a payment of \$2,500.00 was made to Nelson Watson Pinnacle, which the Applicant believes might be representing Midland credit management. The Applicant states that this payment settled the debt. (See, Applicant's Exhibit I). There was also some testimony that the debt to MCDP/CBSD may be the same as the Midland credit management debt, but the Applicant presented no documentary evidence to substantiate this.

Recently, the Applicant learned that his wife, prior to her death, filed Chapter 7 Bankruptcy, and her debts from the marriage were discharged on March 17, 2003. The Applicant submitted a copy of the Bankruptcy matrix to prove that the debts listed in the SOR were discharged. (See Applicant's Exhibit E). The Applicant was not named as a petitioner in her Bankruptcy and has not filed Bankruptcy on his own behalf. (Tr. p. 66).

Although the credit reports presented by the Government reflect each of the delinquent debts listed in the SOR, these credit reports pre-date the credit report offered by the Applicant. The Applicant's most recent credit report dated January 28, 2008, from one of the reporting agencies reflects four of the delinquent debts set forth in the SOR. A debt to Asset Acceptance in the amount of \$4,273.00; a debt to Midland Credit in the amount of \$6,704.00; a debt to Verizon in the amount of \$1,727.00; and a debt to Macy's in the amount of \$573.00. At least three of the four debts remain delinquent and owing and total in excess of \$6,000.00. (See Applicant's Exhibit L). When asked what his intention is concerning his delinquent debts, the Applicant stated,

"I will pay them, or I will enter into an agreement. I am --I am trying to rebuild a life, that's all. I can't do it all -- I couldn't do it all at once. Now, if this is presented to me in a format that I can deal with, that's what I have been trying to do to the best of my ability. I will pay any debt that is brought to me that is valid." (Tr. p. 118).

The Applicant has recently tried to make contact with some of these creditors. The Applicant through his present attorney, recently sent a letter to one of the credit agency's disputing his debt to Verizon in the amount of \$1,700.00. (See Applicant's Exhibit B). Applicant believes that because he only had the phone two days before going out to sea and had no service while out to sea, his bill should not be \$1,700.00.

Performance evaluations of the Applicant reflect "excellent ratings" on the job for the periods January 2006 through April 2006, May 2007 through July 2007 and December 2007 through February 2008. (See Applicant's Exhibit A).

Letters of recommendation from the Applicant's supervisor, the project manager, and the facility security officer of the vessel, collectively indicate that the Applicant is a true professional, with outstanding work performance. His work ethic, maturity and positive attitude make him a valuable asset. He has been responsible for a large consumable budget, direct interaction with vendors, produce usage and handling which all have direct impact on overall project budget and expenditures. He is highly motivated, and a team member with the highest level of integrity and ability. He is highly recommended for a position of trust. (See Applicant's Exhibit C).

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.

Conditions that could mitigate security concerns:

None.

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 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 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 circumstances beyond the Applicant's control initially caused his financial hardships. Namely, when he became the sole supporter of the household, following his wife's lung cancer diagnosis, their separation, and her eventual death. The question now is whether he has acted responsibly since then. He has not.

Before her death, the Applicant's wife filed Chapter 7 Bankruptcy and discharged her debts. Any joint debts incurred during the marriage would continue to be the Applicant's legal and moral responsibility to pay. On the one hand, the Applicant is uncertain about many of the debts listed in the SOR, and contends that he does not know whether they are his or his wife's debts. On the other hand, he asserts that they were his wife's debts and he mistakenly relies on the Bankruptcy matrix to show that the debts were discharged. The Bankruptcy matrix lists a number of the creditors including many of the debts listed in the SOR. However, the matrix simply verifies that those creditors listed were provided notice of the bankruptcy and that the debts may have been discharged. It does not in any way prove that the debts are no longer owed by the Applicant. Despite this, giving the Applicant the benefit of the doubt, I find for the Applicant regarding the delinquent debts set forth in allegations 1(a), 1(c), 1(d), 1(f), 1(i), 1(j), 1(l), 1(m), 1(n), and 1(o).

Based upon the evidence, the Applicant clearly owes the delinquent debts listed in the SOR set forth in allegations 1(b), 1(g), 1(h), and 1(k), and he is disputing the amount of the debt owed in 1(q). As to the delinquent debts, set forth in allegations 1(e), 1(p), and 1(r), the evidence is mixed. He contends that he has paid them, but has submitted no documentary evidence to substantiate the payoffs. It is his burden to show me that he no longer owes these debts, and he has not done it. The Applicant has had sufficient time since his wife's death in December 2004, to get his finances in order and resolve his indebtedness. He has failed to do so.

The Applicant's finances are still in disarray. Despite the fact that in March 2007, he hired a law firm to assist him in determining which debts were his, the evidence shows that very little, if anything, has been resolved since then. I have considered the fact that his present attorney has recently sent letters to the credit agencies concerning his debts. However, at the present time, he does not know what he owes.

Upon review of his financial report, it appears that he has some disposable income at the end of the month to pay his delinquent bills, but he has not used it in any significant way to resolve his indebtedness. His most recent payment made was by debit card. 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* are applicable. None of the mitigating factors 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.

I have also considered the "whole person concept" in evaluating the Applicant's eligibility for access to classified information. I have considered among other things, his favorable performance evaluations and letters of recommendation. However, 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. The Applicant remains excessively indebted. He has only begun the process of financial rehabilitation, and he has a long way to go before his financial affairs are in order.

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.: For the Applicant.
- Subpara. 1.b.: Against the Applicant.
- Subpara. 1.c.: For the Applicant.
- Subpara. 1.d.: For the Applicant.
- Subpara. 1.e.: Against the Applicant.
- Subpara. 1.f.: For the Applicant.
- Subpara. 1.g.: Against the Applicant.
- Subpara. 1.h.: Against the Applicant.
- Subpara. 1.i.: For the Applicant.
- Subpara. 1.j.: For the Applicant.
- Subpara. 1.k.: Against 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.: Against the Applicant.
- Subpara. 1.q.: Against the Applicant.
- Subpara. 1.r.: 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