



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-04035
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer I. Goldstein, Department Counsel
For Applicant: *Pro Se*

October 30, 2008

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Questionnaire for National Security Positions (SF-86), on August 28, 2007. (Government Exhibit 1). On May 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on June 25, 2008, and requested a hearing before an Administrative Judge. This Administrative Judge was assigned the matter on July 22, 2008. A notice of hearing was issued on August 12, 2008, scheduling the hearing for October 2, 2008. The Government offered sixteen exhibits referred to as Government Exhibits 1 through 16, which were received without objection. Applicant testified on his own behalf and submitted no exhibits. DOHA received the transcript of the hearing (Tr.) on October 14, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 42 years old and married. He is employed by a defense contractor as a Senior Technical Specialist, and is applying for a security clearance in connection with his employment.

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 has been married three times and divorced twice. As a result, he became indebted from the expenses of the marriages as well as from the costs of the divorces. In 1989, he married his first wife and they had two children. They separated in 1998. In addition to his other bills, that included a credit union loan for \$15,000.00, the court ordered that he pay temporary child and alimony support of \$2,400 a month. The Applicant fell behind on the loan payments and struggled to pay his living expenses. The child and alimony support amount was eventually reduced, but he still had financial difficulties making ends meet. In 2002/2003, he married his second wife. They incurred debt, and divorced in 2004. He married his current wife in 2005.

Credit reports of the Applicant dated March 28, 2003, September 24, 2001, April 3, 2007, May 5, 2008 and July 22, 2008 indicate that the delinquent debts set forth in the SOR remain delinquent and owing. (Government Exhibits 2, 3, 4, 5 and 6).

In regard to the credit union loan for \$15,000.00, the Applicant believes that his ex-wife may have paid it, but he is not sure.

In 2002, the Applicant became indebted to a creditor in the amount of \$55.00. This debt remains outstanding. (Tr. p. 36). A delinquent debt owed to another creditor in the amount of \$138.00 also remains outstanding. (Tr. p. 41).

In order to cover some of his expenses for gas and groceries, in July 2004, the Applicant used his company credit card to make unauthorized personal purchases. He was suspended for three days without pay because of his misuse of the company credit card.

The Applicant listed a delinquent credit card debt in the amount of \$300.00 on his Questionnaire for National Security Positions. He stated that it no longer appears on his credit report so he believes that it has been paid. (Tr. p. 43).

When asked whether he has any other delinquent debts, the Applicant added that he has an outstanding tax debt in the amount of about \$1,300.00. His wife is currently paying the debt in the amount of \$75.00 a month which comes out of her social security check she receives for disability.

Paragraph 2 (Guideline - M - Use of Information Technology). The Government alleges that the Applicant is ineligible for a security clearance because noncompliance with rules, procedures, guidelines or regulations pertaining to information technology systems may raise security concerns about his reliability and trustworthiness, calling

into question his willingness or ability to properly protect sensitive systems, networks, and information.

Paragraph 3 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because of his questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.

From 2004, until at least February 2005, the Applicant used his company computer to view inappropriate Web sites on the internet. The sites included pictures of woman in bikinis, lingerie, partially undressed and with their breasts and genitals exposed. This was a violation of company policy. In July 2004, the Applicant was admonished by his manager for using a company computer to view these inappropriate Web sites on the internet. (Government Exhibit 9). However, he continued to view the inappropriate sites. The Applicant testified that he knew it was wrong and was aware of the company policies, the Code of Conduct and the Sexual Harassment policy that prohibited such conduct. Following the investigation of this matter, the Applicant was terminated from his employment. (Government Exhibits 7, 8, 9, 10, 11, 12, 13, 15 and 16). He testified, however, that he did not know that it would adversely affect his security clearance. He sincerely regrets what he did, and believes that he has learned his lesson. He states that he will never engage in this misconduct again.

As discussed above, the Applicant also misused his corporate credit card in July 2004 to purchase groceries and gas because he ran short on cash that particular month. The bill reflects that there were 34 charges made by the Applicant that were not business-related expenses, but were for his own personal use. (Government Exhibit 8). The Applicant stated that he paid the bill as soon as he received it. (Tr. p. 45). The Applicant expressed that he will never engage in this misconduct again. He currently has an American Express credit card that was issued as a corporate Government card and he will not touch it. (Tr. p. 46).

POLICIES

Enclosure 2 and Section E.2.2. 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.

Guideline M (Use of Information Technology)

39. *The Concern.* Noncompliance with rules, procedures, guidelines or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. Information Technology Systems include all related computer hardware, software, firmware, and data used of the communication, transmission, processing, manipulation, storage, protection of information.

Conditions that could raise a security concern:

40.(a) illegal or unauthorized entry into any information technology system or component thereof;

40.(e) unauthorized use of a government or other information technology system.

Conditions that could mitigate security concerns:

None.

Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Conditions that could raise a security concern:

16.(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to

comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

16.(d)(2) disruptive, violent or inappropriate behavior in the workplace;

16.(d)(3) pattern of dishonesty or rule violations.

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, 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 financial irresponsibility, misuse of information technology and rule violations that 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 continued 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 engaged in financial irresponsibility (Guideline F), use of information technology (Guideline M), and personal conduct (Guideline E). The totality of 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.

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 Guidelines F, M and E of the SOR.

The evidence shows that the Applicant has incurred a number of delinquent debts that he has simply ignored. Granted, his marriages and divorces have been costly, however, even so, his delinquent debts are not so excessive to prevent him from doing something to demonstrate a showing of good faith or an effort to resolve them. He has not done anything. 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 conditions apply. The Applicant has not made a good faith effort to resolve his indebtedness. His financial problems have not been resolved and they remain owing. Accordingly, I find against the Applicant under Guideline F, Financial Considerations.

With respect to the Applicant's misuse of his company credit card in July 2004, for which his pay was suspended for three days, and the misuse of the company computer, from 2004 through February 2005, by viewing inappropriate Web sites, for which he was terminated from his employment, the misconduct demonstrates a pattern of poor judgment under Guidelines M (Use of Information Technology) and E, (Personal

Conduct) that is fairly recent and very troubling. Under Guideline M, Disqualifying Conditions 40(a) *illegal or unauthorized entry into any information technology stem or component thereof*, and 40(e) *unauthorized use of a government or other information technology system* apply. None of the mitigating conditions are applicable. Under Guideline E, Disqualifying Conditions 16(d)(2) *disruptive, violent or inappropriate behavior in the workplace*, and 16(d)(3) *a pattern of dishonesty or rule violations* also apply. None of the mitigating conditions are applicable. Consequently, his poor judgment adversely effects his security clearance eligibility.

I have also considered the “whole person concept” in evaluating the Applicant’s eligibility for access to classified information. The Applicant is 42 years old, but has conducted himself in a very immature and irresponsible manner. 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 Guidelines F (Financial Considerations), M, Use of Information Technology and E (Personal Conduct).

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 Paragraphs 1, 2 and 3 are found against the Applicant.

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.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subpara. 3.a.: Against the Applicant.

Subpara. 3.b.: Against the Applicant.

Subpara. 3.c.: Against the Applicant.
Subpara. 3.d.: 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