



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 13-01134
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Department Counsel
For Applicant: *Pro se*

March 25, 2014

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (E-QIP) on September 4, 2012. (Government Exhibit 5.) On November 19, 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.

Applicant responded to the SOR in writing on December 13, 2013, and elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to Applicant on February 4, 2014. Applicant received the FORM on February 10, 2014. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant submitted a response to the FORM dated February 10, 2014. This case was assigned to the undersigned on March 17, 2014. Department Counsel has no objection to Applicant's documents and they were entered into evidence as Applicant's Exhibits 1

through 3. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is granted.

FINDINGS OF FACT

The Applicant is 60 years old and married to his third wife. He has two adult children, and one who is eleven-years old. He is employed with a defense contractor as a Principal Systems Analyst 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. (See Applicant's Answer to SOR). Applicant failed to file his Federal and State income tax returns for tax years 2010, 2011, and 2012. As of the date of the SOR, his tax returns had not yet been filed.

Applicant attended a University in Georgia from 1978 until May 1981, and obtained his Bachelor's degree. He then attended the Air Force Institute of Technology from about 1985 until December 1986, where he earned his Master's Degree. From August 1972 through June 1993, Applicant served on active duty as an officer in the United States Air Force. In June 1993, he retired from the Air Force with an honorable discharge. He began working for his current employer, a defense contractor in November 2001. Applicant was granted a security clearance in February 2008.

On November 13, 2012, Applicant was interviewed by an authorized investigator for the DoD as part of his security clearance background investigation. During that interview, Applicant disclosed that he had not filed his Federal income tax returns for 2010 and 2011, but that he had filed extensions. Applicant gave no excuse for not filing his tax returns other than to say that he probably owed Federal taxes.

A year later, in October 2013, Applicant was required to complete Financial Interrogatories issued by the Defense Office of Hearings and Appeals (DOHA.) Applicant replied to the interrogatories. In the interrogatories, Applicant admitted that he had still not filed his Federal and State income tax returns for 2010, 2011, and 2012. He indicated that his only delinquent debts were his back taxes owed for those years. He further indicated that he would begin to work on his income taxes over the weekend.

Applicant stated in his answer to the SOR, that he filed both his Federal and State income tax returns on December 12, 2012. Copies of certified mail receipts verify this filing. He also stated that he paid all outstanding delinquent income taxes owed for the years in question. Applicant provided copies of his Federal and State income tax returns for 2010, 2011, and 2012 that he filed. Based upon information provided by the Applicant in his answer to the SOR, Applicant owed the Internal Revenue Service \$3,339.00 for 2010; \$5,723.00 for 2011; and \$6,484.00 for 2012, for a total of \$15,546. He submitted copies of personal checks written to the IRS to show that he paid his taxes. (Applicant's Exhibit 3.) His tax returns show that he was owed a refund each year from the state totaling \$4,319. (Government Exhibit 4.) The reason he gave for not filing in a timely manner was simply procrastination on his part.

Applicant's personal financial statement dated September 2013, indicates that after he pays his regular monthly expenses and debt, Applicant has \$2,404 left in discretionary funds at the end of the month. He also had additional income from his military retirement, Veteran's Affairs disability, and rental income. (Government Exhibit 6.)

In his response to the FORM, Applicant stated that, "The problem has been resolved - - I have filed and paid. It has also been quite costly for me and not something that I want to repeat. I am highly motivated to file on time and not have this become an issue in my life ever again." (Applicant's Exhibit 1.) His most recent credit report dated March 1, 2014, shows a credit rating of 761 which is considered "excellent." (Applicant's Exhibit 2.)

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;

19.(g) failure to file annual Federal, state or local income tax returns as required or the fraudulent filing of the same.

Conditions that could mitigate security concerns:

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 that the Applicant deliberately failed to file both his Federal and State income tax returns for tax years 2010, 2011, and 2012. He blames his failure to file his returns on procrastination. This action or inaction on his part shows poor judgment, unreliability and untrustworthiness. Furthermore, this is a complete disregard for both Federal and State laws which raises serious questions as to whether he will comply with rules and regulations concerning the protection and safeguarding of classified information.

In this case, since the Applicant has no past delinquent financial history, no other delinquent debts, and up until 2010 had always filed his income tax returns in a timely fashion, I find this to be an isolated incident that will not recur in the future. The Applicant has much to lose and nothing to gain by procrastinating in the future. From the evidence presented, Applicant did not file his income tax returns until he received

the SOR. Obviously, the possibility of losing his security clearance motivated him enough to file his income tax returns and pay his delinquent taxes. Since doing so, Applicant appears to understand more fully the importance of abiding by the laws of this country, which require him to file annual income tax returns in a timely fashion. He also appears to understand that he must remain fiscally responsible if he is to hold a security clearance.

Applicant has now filed all of the income tax returns in question, and he has paid his delinquent tax debts. Thus, it can be said that he has made a good-faith effort to resolve his past due indebtedness, as he has resolved his delinquent debts. Furthermore, he has not incurred any new debt that he cannot afford to pay. He has demonstrated that he can properly handle his financial affairs. There is clear evidence of financial rehabilitation. In the event that Applicant fails to file his income tax returns in the future, or fails to pay his income taxes in a timely manner, his security clearance will be in immediate jeopardy. 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*, and 19.(g) *failure to file annual Federal, state or local income tax returns as required or the fraudulent filing of the same* apply. However, Mitigating Conditions 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* are also applicable. 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 considered his long time service to the DoD, both as a U.S. Air Force military officer and as a civilian, and his dedication to our country is held in high esteem. He understands the importance of protecting classified information and following the proper rules and regulations to do so. 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. It mitigates 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.

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