



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 14-02982
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: *Pro se*

February 9, 2015

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (E-QIP) on March 21, 2013. (Government Exhibit 1.) On July 30, 2014, 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 the Department of Defense (DoD) 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 on September 4, 2014, and he requested an administrative hearing before a Defense Office of Hearings and Appeals (DOHA) Administrative Judge. This case was assigned to the undersigned Administrative Judge on October 27, 2014. A notice of hearing was issued on October 27, 2014, and the hearing was scheduled for December 4, 2014. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant presented no exhibits at the hearing. He called one witness. He also testified on his own behalf. The record remained open following the hearing until December 26, 2014, to allow the Applicant to submit

additional documentation. The Applicant submitted sixteen Post-Hearing Exhibits which were admitted into evidence without objection, and are referred to as Applicant's Post-Hearing Exhibits 1 through 16. The official transcript (Tr.) was received on December 15, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

Applicant is 46 years old and married with three children. He has a high school diploma and two years of college. He holds the position of Senior Field Engineer for a defense contractor. He 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.

Applicant admitted each of the allegations set forth in the SOR under this guideline, except 1.j., 1.k., 1.t., 1.u., 1.x., and 1.y. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated March 27, 2013; June 4, 2014; October 20, 2014, and November 29, 2014, reflect that at one time Applicant was indebted to the creditors set forth in the SOR totaling approximately \$40,000. (Government Exhibits 3, 4, 5 and 6.)

Applicant joined the United States Navy in January 1990 and served honorably for ten years, until he medically retired in December 1999. During his military career he received numerous awards, decorations and commendations for his outstanding service. (Applicant's Post-Hearing Exhibit 2.) Applicant was never subject to any military discipline, nor did he ever commit a security clearance violation while in the Navy. (Tr. p. 90.) During his military service, he never financially over-extended himself. While still in the military, Applicant was offered a great job opportunity by a defense contractor. He accepted the job once he was discharged from the Navy.

In 1998, while still on active duty, Applicant injured his achilles tendon and had to have surgery. When he got out of the military in 1999, because of scar tissue that had become a problem, Applicant had to have a second surgery on his achilles tendon. Unable to exercise for a sustained period of time, Applicant gained weight. In 2006, Applicant was diagnosed with Type-2 diabetes. At some point, he began to have pain in his leg which was ultimately diagnosed as a tumor. After two biopsies, Applicant had to undergo another surgery to remove the tumor. At this time, Applicant's wife was not employed outside of the home. Applicant missed a significant

amount of work due to his illnesses and accumulated medical debt that he could not afford to pay. The vast majority of the delinquent debts that are set forth in the SOR are his medical bills. (Tr. p. 30.)

Applicant's wife testified that she has always handled the family finances and plans to continue doing so. She has been proactive since the beginning of their financial difficulties. They are currently working to resolve their delinquent debt. She has been in contact with their creditors and has been either setting up payment plans and/or making payments. In the event that everything remains constant, continued full-time employment and no more medical problems preventing him from performing his job, Applicant plans to have all of his delinquent debts paid off in three to six months. (Tr. p. 48.)

The Applicant is now back to work full time and is earning \$96,000 annually. He also receives VA benefits of \$485 monthly. His wife is now employed and earning \$83,000 annually. Their combined income provides sufficient monies to pay their current bills as well as their delinquent debts. Applicant and his wife no longer have any credit cards, as they pay cash for what they need. They recently downsized from a more expensive home to a smaller apartment to free up more cash in order to tackle their debt. (Tr. p. 33.)

The following delinquent debts have either been paid in full, are being paid through a structured payment plan, or remain owing at this time but will be paid within the next few months. 1.a. A delinquent debt to Capital One Auto that was past due in the amount of \$962, with a total balance of \$15,782, is now current. (Applicant's Post-Hearing Exhibit 3.) 1.b. A medical debt that was past due in the amount of \$1,757 has been paid in full. (Applicant's Post-Hearing Exhibit 4.) 1.c. A delinquent student loan debt in the amount of \$1,559 is scheduled to begin payments of \$50 monthly on January 9, 2015. (Applicant's Post-Hearing Exhibit 5.) 1.d. A delinquent debt owed to Capital One in the amount of \$770 has been paid in full. Applicant made two payments of \$419.68 toward the debt on November 10, 2014, and December 10, 2014. (Applicant's Post-Hearing Exhibit 6.)

A number of medical debts have been consolidated for payment under the California Business Bureau, Inc. These delinquent accounts are set forth in 1.e., 1.f., 1.h., 1.k., 1.i., 1.m., 1.n., 1.o., 1.p., 1.q., 1.r., and 1.s of the SOR. Applicant's first payment of \$550 is due on January 10, 2015. (See, Applicant's Exhibit 7.) 1.e. A medical debt on an account that is past due in the amount of \$670. 1.f. A medical debt on an account that is past due in the amount of \$646. 1.h. A medical debt on an account that is past due in the amount of \$305. 1.k. A medical debt on an account that is past due in the amount of \$194. 1.i. A medical debt on an account that is past due in the amount of \$175. 1.m. A medical debt on an account that is past due in the amount of \$169. 1.n. A medical debt on an account that is past due in the amount of \$119. 1.o. A medical debt on an account that is past due in the amount of \$107. 1.p. A medical debt on an account that is past due in the amount of \$93. 1.q. A medical debt on an account that is past due in the amount of \$58. 1.r. A medical debt on an

account that is past due in the amount of \$40. 1.s. A medical debt on an account that is past due in the amount of \$26.

1g. A delinquent debt owed to Credit One Bank for an account that is 120 days past due in the approximate amount of \$500 is now current. (Applicant's Post-Hearing Exhibit 8.) 1.i. A medical debt on an account that is past due in the amount of \$280 has been paid in full. (Applicant's Post-Hearing Exhibit 9.) 1.j. A delinquent debt owed to Capital One for a charged off account in the amount of \$268 has a zero balance as of December 12, 2014. (Applicant's Post-Hearing Exhibit 10.) 1.t. A state tax lien in the amount of \$9,934 has been paid. (Applicant's Post-Hearing Exhibit 11.) 1.w. A delinquent debt owed to Midland Funding for a past due account in the amount of \$362 was settled on November 26, 2014. (Applicant's Post-Hearing Exhibit 7.) 1.x. A delinquent debt that was placed for collection in the approximate amount of \$214 has been paid. (Applicant's Post-Hearing Exhibit 12.) (Applicant's Post-Hearing Exhibit 12.) 1.z. A medical debt that was placed for collection in the approximate amount of \$87 has been paid. (Applicant's Post-Hearing Exhibit 13.) 1.aa. A medical debt that was placed for collection in the approximate amount of \$79 has been paid. (Applicant's Post-Hearing Exhibit 14.) 1.1. A medical debt that was placed for collection in the approximate amount of \$33 has been paid. (Applicant's Post-Hearing Exhibit 15.) Applicant has submitted proof of payment for one additional medical bill. It is unclear from the documentation what debt it pertains to in the SOR. (See, Applicant's Post-Hearing Exhibits 16.)

The following debts remain outstanding and need to be addressed. Applicant indicates that he plans to pay them within the next few months. 1.u. A medical debt placed in collections in the amount of \$568. 1.v. A medical debt that was placed for collection in the approximate amount of \$368. 1.y. A medical debt that was placed for collection in the approximate amount of \$214. 1.bb. A medical debt that was placed for collection in the approximate amount of \$62. 1.cc. A medical debt that was placed for collection in the approximate amount of \$46. 1.dd. A medical debt that was placed for collection in the approximate amount of \$42.

Letters of recommendation submitted on behalf of the Applicant from professional colleagues, both military and civilian, who have known and or worked with the Applicant for more than ten years, and one from a deacon in his church, indicate that Applicant's performance, honesty, integrity and devotion to duty are beyond reproach in all aspects. Applicant is said to perform superior work, be highly professional, well respected, dedicated, and a team player. He is considered to be trustworthy, reliable, and loyal to the United States. He is highly recommended for a security clearance. (Applicant's Post-Hearing Exhibit 1.)

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he has engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness 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.

Applicant completed a security clearance application dated March 21, 2013, Section 26 which asked, "In the past seven years, have you had a lien placed against your property for failing to pay taxes or other debts?" The Applicant answered, "NO," to the question. (Government Exhibit 1.) This was a false response. He failed to list the lien that was placed against him set forth in 1.t., of the SOR. Applicant claims that at the time he completed the security clearance application he knew nothing about a lien and in fact the lien was imposed sometime later. He states that if he would have known about the lien he would have revealed it. (Tr. p. 95.)

Section 26 also asked, "In the past seven years, have you had bills or debts turned over to a collection agency? Are you currently over 120 days delinquent on any debt?" The Applicant answered, "NO," to both questions. (Government Exhibit 1.) These were false responses. He failed to disclose the delinquent debts set forth in subparagraphs 1.t., through 1.ee. above. Applicant explained that he did not intend to conceal anything from the Government when he answered these questions. He knew he had some delinquent debts, but he also knew that he was working to resolve them. He completed the application quickly, without thinking carefully, did not take it home, as it had been in his work mailbox for several days before he got it. Since it had a time stamp of urgency on it, he completed it to the best of his ability, and submitted it that very day. (Tr. pp. 95-96.) He regrets answering the questions without being accurate, but states that it was not intentional.

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;

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.

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.(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Conditions that could mitigate security concerns:

None.

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;

- 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 behavioral 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 adjudication 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 that 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, and/or dishonesty, 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) and that he appears to have dishonest on his security clearance application (Guideline E.) 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 Applicant's experienced a series of health problems beginning in 1998 that continuing until just recently, that caused his financial indebtedness. Until then, he had demonstrated financial responsibility and paid his bills on time. Since his health problems have now been taken care of, and his wife has started working, Applicant has been resolving his delinquent debt. He has downsized his home and reduced his expenses in order to free up more money to pay off his debt more rapidly. Presently, he has paid off some of his debt, and is making payments to resolve the others. Accordingly to his financial payment plan, he will be completely debt free in three to six months.

Under the circumstances, Applicant is making a good-faith effort to resolve his debts. He understands that he must remain fiscally responsible if he is to hold a security clearance. He has not incurred any new debt that he cannot afford to pay, and he is working to resolve his delinquent debts. There is clear evidence of financial rehabilitation. However, in the event that he cannot meet his financial obligations, or if he does not completely resolve his current outstanding debt, his security clearance will be immediately in jeopardy. 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*, apply. However, Mitigating Conditions 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; 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 also apply. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

In regard to his personal conduct, I find that he did not intentionally conceal his delinquent debts from the Government on his security clearance application when he answered the questions in Section 26. As he stated, he was under pressure to complete the application, and he did not take it home or check with his wife about the particulars of their finances. He should have. He now knows that in the future, to be accurate, he must pay particular attention to each question and if necessary, he must consult with his wife about the particulars of their finances. I find that he was careless in completing the application, but that he did not deliberately attempt to conceal the information from the Government on the application. Accordingly, I find for the Applicant under Guideline E (Personal Conduct).

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 good judgment, 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, including his favorable letters of recommendation and his dedicated military service. Overall, 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 E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.
Subparas. 1.a.: through 1.ee. For the Applicant.

Paragraph 2: For the Applicant.
Subpara. 2.a.: For the Applicant.
Subpara. 2.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