



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



In the matter of:)
)
-----) ISCR Case No. 14-00536
)
Applicant for Security Clearance)

Appearances

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

July 30, 2014

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (E-QIP) on August 6, 2007, and September 25, 2013. (Government Exhibits 1 and 3.) On March 11, 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 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 on March 20, 2014, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on May 2, 2014. A notice of hearing was issued on May 8, 2014, and the hearing was scheduled for June 11, 2014. At the hearing the Government presented eight exhibits, referred to as Government Exhibits 1 through 8, which were admitted without objection. The Applicant presented three exhibits, referred to as Applicant's Exhibits A through C, which were also admitted into evidence without objection. He also testified on his own behalf. The record remained open until close of business on June 24, 2014, to allow the Applicant to submit

additional documentation. The Applicant submitted three Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A through C, which were admitted without objection. The official transcript (Tr.) was received on June 24, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

Applicant is 42 years old and divorced with three children. He has a Bachelor's of Arts Degree and a Bachelor's of Science Degree in Mechanical Engineering. He holds the position of Logistics 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 denied allegation 1(a) set forth in the SOR, and admitted each of the other allegations under this guideline. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated August 16, 2007; October 10, 2013; and June 9, 2014, reflect that at one time Applicant was indebted to each of the six creditors set forth in the SOR, in an amount totaling approximately \$15,000. (Government Exhibits 2, 4 and 7.) In June 2013, Applicant started working as an intern for a defense contractor. He was offered and accepted a full time position in January 2014.

From 1989 to 2009, Applicant served honorably on active duty in the United States Navy, until he retired. During his military career, Applicant received numerous awards and commendations for his outstanding service, which includes at least four Navy and Marine Corps Achievement Medals and one Navy Commendation Medal. In 1992, Applicant was married. He admits that during his marriage, he and his wife were not as financially responsible as they should have been. They divorced in 2002, and Applicant assumed all of the debt from the marriage. His intention was to pay all of the debt as soon as possible. Applicant testified that although some of his debts became delinquent, he never missed a child support payment.

In 2007, Applicant and his brother moved in together and comfortably shared the rent on a house. That same year, Applicant cosigned for an automobile for his older brother. In September 2008, Applicant's brother unexpectedly lost his job and Applicant could not afford to pay the rent by himself, since it was his brother who provided most of the monthly financial assistance. Applicant's brother's loss of income forced the Applicant to break the residential lease to avoid additional penalties. In 2009,

when the Applicant retired from the Navy, he enrolled in school full-time. While in school he was not working, and his only income was from his G.I. Bill and his pension. This covered his rent, living expenses, and child support, but he did not have the ability to address his other debt. The following delinquent debts set forth in the SOR became delinquent, but have since been paid. 1(a) A delinquent medical account for services rendered to Applicant's minor daughter in the amount of \$111 was paid by the Applicant on May 14, 2014. (Applicant's Exhibit A, and Tr. p. 28.) 1(b) A delinquent credit card debt in the amount of \$782 was paid by Applicant on May 19, 2014. (Applicant's Exhibit B.) 1(c) A delinquent credit card debt in the amount of \$1,504 was paid by Applicant on May 27, 2014. (Applicant's Exhibit C.)

Applicant has been working to resolve the three remaining creditors. With respect to 1(d), a delinquent debt owed for a purchase of a television in the amount of \$3,347, Applicant has been given three options. He can pay the debt in full now, pay a settlement amount now, or make payments until the full amount is paid. Applicant states that he intends to make payments until the debt is paid in full, and is waiting to hear from the creditor as to the amount of the payment. (Applicant's Post-Hearing Exhibit A.) Applicant recently arrived at a settlement agreement with the creditor concerning 1(e), a delinquent debt in the amount of \$7,818 for a vehicle he cosigned for his brother that was repossessed. Applicant will pay the creditor \$1,250 on or before June 24, 2014, and \$1,250 on or before July 24, 2014, for a total of \$2,500. The debt will then be resolved. (Applicant's Post-Hearing Exhibit E.) 1(f) A delinquent debt owed for the purchase of a timeshare in the amount of \$1,276.00 has been resolved. Applicant submitted a copy of a e-mail confirmation indicating that the company's credit department has notified a credit reporting agency that the account has a zero balance. (Applicant's Post-Hearing Exhibit B.)

Applicant acknowledged that while in college he took courses in finance that have helped him learn how to set up a budget, pay his bills on time, and live within his means.

Naval evaluation reports of the Applicant for the period from November 2006 to November 2007, and March 2008 to November 2008, reflect ratings of either "above standards" or "greatly exceeds standards", in every category. It is also noted that Applicant is a top performer and superb leader. Applicant submitted a certificate of appreciation for his honorable service to the country, and a letter of appreciation from the Department of the Navy for his tremendous job during the September 20 2002, fire prevention brush removal project. (Applicant's Post-Hearing Exhibits C and D.)

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.

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 became delinquently indebted during his marriage, when he and his wife were not financially responsible. Later, when his brother lost his job, his financial problems compounded. After retiring from the Navy, Applicant attended college and did not work, so his income was limited to what he received under the G.I. Bill and his pension. Only after graduating from college, and obtaining a full time job with a defense contractor, is Applicant earning sufficient monies to pay his bills. Since he has been employed, he has shown progress toward resolving his delinquent debts and has demonstrated financial responsibility.

Applicant has provided documentation showing that he has contacted each of his creditors, and has either paid off the delinquent debt, settled it, or set up payments to resolve it. Applicant has made 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 paid off three of the six debts, reached a settlement with two others, and is starting payments on the sole remaining debt. He has not incurred any new debt that he cannot afford to pay. He has learned in college how to properly manage his financial affairs. There is clear evidence of financial rehabilitation. However, in the event that he becomes excessively indebted again, and cannot meet his financial obligations, or if he does not completely resolve his current outstanding debt, 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*, 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).

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 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, including Applicant's twenty years of military service, his favorable performance evaluations, awards and commendations. 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.
Subpara. 1.c.:	For the Applicant.
Subpara. 1.d.:	For the Applicant.
Subpara. 1.e.:	For the Applicant.
Subpara. 1.f.:	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