



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



In the matter of:)
)
-----) ISCR Case No. 14-00781
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Ryan C. Nerney, Attorney At Law, The Edmunds Law Firm

November 7, 2014

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (E-QIP) on July 23, 2013. (Government Exhibit 1.) On May 6, 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 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 June 23, 2014, and he requested an administrative hearing before a Defense Office of Hearings and Appeals Administrative Judge. This case was assigned to the undersigned Administrative Judge on August 13, 2014. A notice of hearing was issued on August 28, 2014, and the hearing was scheduled for September 25, 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 ten exhibits, referred to as Applicant's Exhibits A through J, which were also admitted into evidence without objection. He also testified on his own behalf. The record remained open until close of business on October 9,

2014, to allow the Applicant to submit additional documentation. The Applicant submitted four Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits K through N, which were admitted without objection. The official transcript (Tr.) was received on October 8, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

Applicant is 56 years old with two adult children. He is engaged to be married for the fourth time. He has an Associate's Degree in Applied Science, and has completed a Systems Engineer Certificate program as well as a continuing education course. He holds the position of Systems 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 the single allegation set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated November 3, 2006; May 14, 2008; July 30, 2013; August 6, 2014; and September 25, 2014, reflect that at one time Applicant was indebted to the creditor set forth in the SOR, in an amount totaling in excess of \$332,214.78. (Government Exhibits 2, 3, 4, 5, and 6.)

Applicant served honorably on active duty in the United States Air Force for more than 20 years from 1979 to 1999, and retired as a master sergeant. During his stellar military career he underwent numerous deployments and received many awards, decorations, and commendations for his service. (Tr. pp. 45 - 48, and Applicant's Post-Hearing Exhibit K.) From 1979 to 1997 he held a Top Secret/SCI clearance, from 1997 to 2005, a Secret clearance, and from 2007 to the present, a Top Secret, without incident. He has been employed with his current employer since 2005.

Applicant has been married and divorced three times. Following each of his divorces, he has experienced a period of financial difficulty. Other than this, he has no history of financial problems, bankruptcies, or an inability or unwillingness to pay his debts.

Following his first marriage, from 1984 to 1996, he was responsible to pay the legal fees. In July or August 1999, after retiring from the Air Force, Applicant, a single parent, purchased a house for himself and his two children of whom he had full custody.

He paid \$130,000 for the house and purchased it with a Veteran's Administration 30-year fixed mortgage. (Tr. p. 53.) His payments at that time were \$900 monthly.

In 2001, Applicant was married a second time. The marriage failed in 2003. In 2003, the court ordered that the house be refinanced in order to help pay off the debt incurred during the marriage and debt for his wife's legal problems with her previous husband, cars, and her daughter's counseling. Applicant refinanced the house, and the payments increased to about \$1,700 monthly. (Tr. p. 55.)

In 2005, Applicant was married a third time, but divorced a year later. In 2006, he again refinanced the house to pay for divorce-related expenses, and the payments increased to \$2,200. (Applicant's Exhibit D.) Although the payments substantially increased over the years, the Applicant continued to have the ability to make the payments on the house and always made them in a timely fashion. He was never delinquent. (Tr. p. 59.)

By 2013, the loan on Applicant's house had increased to \$298,000. At this point, the house was only worth \$148,000. (Tr.p. 59.) Applicant was clearly upside down on the loan. Applicant realized that he needed some professional advice on what to do regarding the loan. He sought out legal assistance from an attorney who told him not to bother trying to get a debt relief program or a loan modification. The attorney recommended that the Applicant return the house to the bank. He also explained the legal ramifications of doing so, and the fact that Applicant will probably be subject to substantial tax liability. After careful thought, Applicant took his advice. At some point, Applicant became delinquent on his mortgage account in the amount of \$15,883.00. The account was in foreclosure status with a total loan balance of \$299,740. The Notice of Trustee's sale indicates that the unpaid balance and other charges amounted to \$332,214.78. (Applicant's Exhibit B.) The house was ultimately foreclosed upon, and sold for \$178,000 on March 14, 2014. (Tr. pp. 37, and 63.) Applicant's most recent credit report dated September 24, 2014, is no longer reporting the real estate loan as delinquent. (Applicant's Exhibit E.)

Applicant has not yet received an Internal Revenue Form 1099, but is expecting it. He has already saved \$13,000 in his IRA that he expects to use to pay his tax liability for 2014. His attorney advised that he may be required to pay as much as \$20,000 to \$30,000 in taxes. Applicant testified credibly at the hearing that if he would have known that what he was doing could be construed as a strategic default for purposes of his security clearance, he would never have followed his attorney's advice. He would instead have kept the house. (Tr.p. 63 - 64.)

Applicant testified that he is once again planning on getting married. His fiancée, with whom he currently lives, earns about \$70,000 annually. He earns \$119,000 annually. Together, they will have no problem paying their bills, supporting their family, and being fiscally responsible.

Applicant's performance evaluations for the periods from January 2011 to December 2011; and January 2012 to December 2012, are favorable, and reflect overall ratings that he either "meets" or "exceeds" his job requirements. (Applicant's Exhibit I.)

A letter from the Applicant's supervisor, who has known the Applicant since 2009, indicates that he has never questioned his integrity or character when protecting classified information. He has never had a security violation during the past five years. In fact, the Applicant's diligence has prevented incidents that could have led to security infractions. Applicant has consistently received performance awards and promotions for his outstanding work performance, and is considered a highly valued team member for the program. He is recommended for a security clearance. (Applicant's Exhibit J.)

Letters of recommendation from the Vice President of Special Programs, the Computer Systems Security Manager, an Engineering Manager, a Software Engineer, a Security Engineer, and a Systems Engineer Manager at the company where the Applicant works, attest to Applicant's high degree of integrity, responsibility, and ambition. Applicant is said to exhibit careful attention to detail, strong technical knowledge, strong work ethics, and takes pride in accomplishing tasking that is often confusing and without direction. He is also described as honest, loyal, professional, and a leader. He is highly recommended for a security clearance. (Applicant's Exhibit J.)

An Adverse Information Report dated March 29, 2013, with a letter from the Applicant that is attached, confirms the fact that Applicant self-reported his 90-day late mortgage status on his home loans, and the fact that he was following the advice of his attorney by allowing the house to go back to the bank. (Applicant's Post-Hearing Exhibit N.)

A letter from Applicant's fiancée, who was with the Applicant when he met with his attorney, corroborates the advice Applicant received on how to resolve the upside down financing on the Applicant's house. She states that he was told to allow the house to go back to the bank. (Applicant's Post-Hearing Exhibit L.)

Applicant is current on all of his other debts. He has a history of paying his bills on time and living within his means. Applicant's personal financial statement indicates that after paying all of his bills and regular monthly expenses, he has in excess of \$900 left in discretionary funds at the end of the month. (Applicant's Exhibit F.)

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;
- 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 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.

Applicant's three divorces caused considerable strain on his finances, and his property was the asset to be most affected. Not knowing what to do, he sought out professional advice from an attorney concerning the upside down mortgage loan on his house. He followed the advice of his attorney, who told him to allow the house to go into foreclosure. Although it can be argued that Applicant strategically defaulted on the loan, since he had the ability to make the mortgage payments, he credibly testified at the hearing that he was only following the advice of counsel, and he thought that he was doing the right and responsible thing under the circumstances. At the time he made the decision to allow the house to be foreclosed upon, he did not consider his security clearance, or how the Government might view the foreclosure. In retrospect, he stated that if he knew it could be viewed as improper, he would have kept the house. Applicant intentions were honorable throughout the entire process. This was an isolated incident that will not happen again.

Applicant expects to receive a Form 1009-A and/or a Form 1099-C from the lender concerning the loan on the property. He will be required to pay the taxes that are assessed from the transaction, and he is prepared to do so. Applicant contends that, except for the taxes, the mortgage loan in question has been resolved with the sale of the home. The real estate loan was also removed from all three credit reporting agencies that had previously reported it delinquent.

Applicant understands that he must remain fiscally responsible if he is to hold a security clearance. He has made a good-faith effort to resolve his past-due indebtedness. He has not incurred any new debt that he cannot afford to pay. He has learned from his mistakes, and demonstrated that he can properly manage his financial affairs. There is clear evidence of financial rehabilitation. 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, supports 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 excellent and dedicated service to our country during his 20 plus years of active duty in the Air Force, followed by his 15 years of civilian service. 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.

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