



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



In the matter of:)
)
-----) ISCR Case No. 14-01001
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Department Counsel
For Applicant: *Pro se*

October 10, 2014

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (E-QIPs) on April 5, 2012; September 24, 2007; and February 1, 2006. (Government Exhibits 1, 2 and 3.) On April 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 June 14, 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 August 13, 2014. A notice of hearing was issued on September 3, 2014, and the hearing was scheduled by video-teleconference for September 18, 2014. At the hearing the Government presented ten exhibits, referred to as Government Exhibits 1 through 10, which were admitted without objection. The Applicant presented seven exhibits, referred to as Applicant's Exhibits A through G, 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 2, 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 October 1, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

Applicant is 53 years old and married with three teenaged children. He has a Bachelor's of Science Degree in Aerospace Engineering. He holds the position of Flight Test 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. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated March 11, 2006; October 11, 2007; August 8, 2012; November 8, 2013; and July 30, 2014, reflect that at one time Applicant was indebted to each of the three creditors set forth in the SOR, in an amount totaling approximately \$25,000. (Government Exhibits 6, 7, 8, 9, and 10.)

From February 1982 to February 1986, Applicant served honorably on active duty in the United States Marine Corps. In 2005, he began working for his current employer, and obtained a security clearance about the same time. (Tr. p. 76.) There is no evidence in the record of any security violations or disciplinary actions brought against the Applicant by his employer or anyone else for any reason.

Applicant has a history of not meeting his financial obligations, mainly relating to his taxes, which began in about 2002. He explained that for about ten years, from 2001 until 2011, he tried to give his two boys the opportunity they wanted to play travel hockey youth sports. This is an expensive sport. Despite his better judgment, he could not tell the boys that they could not play. Although it was difficult, he continued to provide for these expenses which cost him thousands of dollars over the years. His boys are now in college, and he no longer has those sports-related financial obligations.

About this same time, Applicant, who had been working for a start-up company as a consultant in 2000, was laid off in July 2002. (Tr. p. 45.) As a self-employed consultant, he was given bad tax advice on how to account for a IRS Form-1099, and what expenses he could deduct. In 2002, he wound up owing taxes because of his lack of knowledge concerning the self-employment tax rules. (Tr.p. 46.) By 2009, he began taking withdrawals from his 401(k) to meet his mortgage payments and to make ends meet. (Tr. p. 46.) Applicant applied for a loan modification on his house in order to make his home loan more affordable. In May 2014, Applicant was granted the loan modification. (See Applicant's Exhibit G.)

As a direct result of his overspending and lack of income tax knowledge, he became indebted to the Internal Revenue Service (IRS) and the state franchise tax board for delinquent back taxes. Applicant testified that although he did not always have the money to pay his taxes, he always filed his income tax returns on time. It is noted that the allegations set forth in the Statement of Reasons fail to allege what year the Applicant is indebted for in back taxes, and only alleges a debt amount.

1.a., 1.b., and 1.c. Applicant's most recent credit report dated July 30, 2014, indicates that there are three different liens that were filed against the Applicant. A tax lien was filed against the Applicant in March 2012 for \$5,401. A lien was filed against the Applicant in February 2010 for \$4,334; and a lien was filed against the Applicant in 2007 for \$14,625, which was subsequently released. (See Government Exhibit 10.) In 2012, in an effort to resolve his federal tax liability, Applicant and his wife adjusted their withholdings so that they pay more in federal taxes during the year, and the overpayment is applied to the back taxes owed. (Applicant's Exhibit F.) A copy of his wife's IRS Form W-4 reflects zero exemptions. (Applicant's Exhibit F.) This substantiates his claim that the IRS is receiving excess tax withholdings to be applied against delinquent taxes owed. For example, for tax year 2013, Applicant's overpayment was applied to his federal taxes owed for 2003 and 2007. (Applicant's Exhibit E.) In 2013, an overpayment of \$1,391.21 was applied to back taxes owed for 2003 which is now paid in full. (Applicant's Exhibit E.) In 2013, an overpayment of \$6,327.75 was applied to back taxes owed for 2007 which is now paid in full. (Applicant's Exhibit E.) Applicant projects that his 2014 income tax return refund will also be applied to his back taxes owed.

Applicant provided a copy of his IRS account transcript dated September 22, 2014, indicating that his total federal tax liability is now \$16,355. Broken down, Applicant owes \$8,487.96 for tax year 2012; \$1,459.60 for tax year 2011; \$4,297.23 for tax year 2010; \$3,127.29 for tax year 2009; \$109.33 for tax year 2007. Applicant plans to continue paying off the debt with the overages he will receive each year from his income tax returns. (Applicant's Post-Hearing Exhibit A.)

1.d., and 1.e. Applicant was indebted to a creditor in the approximate amounts of \$972 and \$835 that were placed into collection. Applicant believes the debts are one in the same, as he is not aware of more than one debt owed to this creditor.

Applicant provided a letter from a collection agency indicating that the debt for \$972 was settled in full on September 30, 2014. (Applicant's Post-Hearing Exhibit C.)

1.f. Applicant was indebted to the state franchise tax board for a tax lien entered against him in the amount of \$8,209.07. Applicant has set up payment arrangements in the amount of \$300.00 monthly and has been making them since January 2014. (Tr. p. 52.) These payments are automatically deducted from his bank account until the debt is paid in full. (Applicant's Exhibit D.) Applicant provided a copy of the account summary that indicates that he owes a total of \$6,703.74 in back state taxes, for tax years 2011, 2012 and 2013. Broken down, Applicant owes \$553 for 2013; \$5,013.81 for 2012 and \$1,156.03 for 2011. The earlier tax years have been paid or otherwise resolved. (Applicant's Post-Hearing Exhibit B.)

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.(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 for about eight years, between 2002 and 2010, Applicant spent a great deal of money on his children's travel hockey, and also suffered the consequences of not being knowledgeable of the self-employment tax rules, or 401(k) withdrawal penalties. This caused him to become delinquently indebted to the state and federal taxing authorities. During this eight year period, Applicant did not show good judgment or reliability. From a general observation, Applicant has not been the most organized person or most knowledgeable about his finances. He struggled at the hearing to answer questions about his delinquent debt, for lack of knowledge, but it is clear that he realizes the importance of paying his taxes, and he is now committed to resolving this past-due indebtedness.

Although it is not the most conventional method of paying his back taxes, Applicant has significantly adjusted his withholdings to pay more in federal taxes in order to resolve his federal tax liability. His wife has reduced her exemptions to increase the amount of withholding with the understanding that the overage will be applied to his back taxes owed. He testified that at some point, he did make some voluntary payments to the IRS under the advice of an attorney. He was waiting for notification from the IRS in order to set up permanent payment arrangements, but this never developed.

Applicant refinanced his home to reduce his monthly obligation in order to provide additional monies to satisfy the IRS debt. By reducing the withholdings on the

IRS Form W-4, this reduces his take-home pay which is offset by the modified monthly mortgage obligation.

Documentation provided by the Applicant shows that he has resolved one of his debts, is making monthly payments to resolve another, and he has set up his federal taxes so that he has an overage each year that he expects to be applied to his federal past due tax liability. 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 has no other 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. 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.(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 military 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.
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