



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 14-01171
)
Applicant for Security Clearance)

Appearances

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

October 29, 2015

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on August 15, 2013. (Government Exhibit 1.) On May 13, 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.

The Applicant responded to the SOR in May 2014 and on March 23, 2015, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on May 4, 2015. A notice of hearing was issued on June 3, 2015, scheduling the hearing for June 24, 2015 by video-conference. The Government presented five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. The Applicant presented six exhibits, referred to as Applicant's Exhibits A through F, which were admitted without objection. The Applicant testified on his own behalf. The record remained open until close of business on July 8, 2015, to allow the Applicant to submit additional supporting

documentation. Applicant submitted seven documents, referred to Applicant's Post-Hearing Exhibits A through G, which were admitted without objection. The official transcript (Tr.) was received on July 6, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

The Applicant is 42 years old and married a second time with four children. He has a Bachelor's Degree in Criminal Justice and is currently working on his Master's Degree. He is employed with a defense contractor as a Senior Network Engineer 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 admits allegation 1.a., and denies the remaining allegations set forth in the SOR under this guideline. Credit Reports of the Applicant dated September 5, 2013; and April 26, 2015, reflect that the Applicant was indebted to each of the creditors in an amount totaling in excess of \$95,000. (Government Exhibits 4 and 5.)

Applicant served in the United States Army from November 1989 until June 2013, when he retired with an honorable discharge. During his military career, he received numerous awards and decorations, including five Army Achievement Medals, seven Army Commendation Medals, four Good Conduct Medals, two National Defense Medals, the Global War on Terrorism Service Medal and others, and a litany of letters of achievement and recognition. He maintained a security clearance throughout his time in service without interruption. Applicant went through an Article 32 investigation for fraud, but the matter was dropped for insufficient evidence and did not go to a Court Martial. (Tr. p. 44.)¹

Applicant was married to his first wife from 2001 to 2011. They legally separated in 2007. From the time they separated through the time of divorce, Applicant

¹ Unbeknownst to the Applicant, his initial divorce papers filed in 2007 were prepared and /or filed improperly and the final order of dissolution was a fake. He subsequently met another woman, and they eventually married. Applicant's ex wife went for a medical procedure, which she thought was covered by Tri Care, but was not, as she was no longer in the system as Applicant's dependent. She brought a legal complaint against Applicant and the matter was investigated by the Army CID. Applicant re filed for divorce and became officially divorced. His second marriage had to be annulled, and then he remarried his current wife.

always paid child support. Until the court order in July or August 2012, he paid \$1,600 a month. The court order increased the amount to \$1,900 per month. Applicant has always paid the debt and to his understanding he has never been behind. Applicant started living with his current wife in 2008, and they were married in 2014.

1.a., According to his credit reports, Applicant was indebted to a state for an account that was placed for collection in the approximate amount of \$51,199. Applicant explained that this was a monetary lump sum awarded by the court in July or August 2012, for spousal support and medical bills to his ex-wife. The court order appears to be retroactive, indicating that Applicant was in arrears. Applicant states that he learned of the court judgment in June 2013. (Tr. p. 35.) Since then, Applicant has been making regular monthly payments through the requisite Department of Social and Health Services and has already reduced the amount to \$41,483. (Applicant's Exhibit A and Applicant's Post-Hearing Exhibit A.)

1.b., Applicant was indebted to a creditor for an account placed for collection in the approximate amount of \$18,216. Applicant states that this was a duplicate of a debt concerning the repossession of his vehicle in 2007. He contacted the creditor to dispute the duplicate reports on his credit. This debt has been removed from his credit reports. (Applicant's Post-Hearing Exhibit C.)

1.c., Applicant was indebted to a creditor for an account placed for collection in the approximate amount of \$1,084. Applicant states he disputed the debt in August 2012. He reported that he was a victim of identity theft and the debt was fraudulent. (Applicant's Exhibits B and C.) This debt has been removed from his credit reports. (Applicant's Post-Hearing Exhibit C.)

1.d., Applicant was indebted to a creditor for an account placed for collection in the approximate amount of \$378. Applicant states that he disputed the debt in August 2012. He reported that he was a victim of identity theft and the debt was fraudulent. (Applicant's Exhibits B and C) This debt has been removed from his credit reports. (Applicant's Post-Hearing Exhibit C.)

1.e., Applicant was indebted to a creditor for an account that was placed for collection in the approximate amount of \$122. Applicant states that he disputed the debt in August 2012. He reported that he was a victim of identity theft and the debt was fraudulent. (Applicant's Exhibits B and C.) This debt has been removed from his credit reports. (Applicant's Post-Hearing Exhibit C.)

1.f., Applicant was indebted to a creditor for an account placed for collection in the approximate amount of \$24,873. Applicant states that this is a duplicate debt on his credit report for the repossession of his vehicle in 2007. He contacted the creditor to dispute the duplicate report. This debt has been removed from his credit reports. (Applicant's Post-Hearing Exhibit C.)

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because she 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 August 15, 2013, and answered, "NO," to a series of questions concerning his finances. (Government Exhibit 1.) Section 26 asked, "In the past seven years, have you been delinquent on alimony or child support payments?" Applicant answered, "NO." The Government contends that this was a false answer. Applicant explained that he answered, "NO," to the question on his e-QIP because all of his child and spousal support payments have been made on time. Since the court order was imposed, he has not missed a payment and has been making regular monthly payments through the state Department of Social and Health Services.

Section 26 of the same application further asked, "In the past seven years have you defaulted on any type fo loan? . . . In the past seven years, have you had bills or debts turned over to a collection agency? . . . In the past seven years, have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? . . . In the last seen years have you been over 120 days delinquent on any debt not previously entered?" Applicant answered, "NO," to each of the questions. The Government asserts that these were false responses, since the Applicant failed to list the delinquent debts set forth above. Applicant again explained that the reason he answered, "NO," to these questions on his e-QIP was because these were all items he disputed as fraudulent on his credit report. They have all been removed from his credit report and no longer show as derogatory.

Applicant's military service documents, which include his performance evaluation reports for 1993, 1996, 2000, 2001, and 2003 through 2008, reflect that he consistently received above average ratings. He either received an "excellent," which means that he exceeds standards; or "success," which means that he "fully meets standards" in every category. He is noted as being among the best, and was consistently recommended for promotion ahead of peers. Overall he was considered to be an outstanding soldier. (Applicant's Post-Hearing Exhibit E.)

Letters of recommendation from friends and professional associates reflect that Applicant is known as a highly intelligent and professional individual who works diligently and follows all rules and regulations. He shows integrity and morals, and consistently demonstrates honesty and trustworthiness. He is considered to be a mentor and role model for many. He is said to be an upstanding citizen who is a proactive member of the community, a devout member of his faith, and a great father to his children. (Applicant's Post-Hearing Exhibit 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 obligation.

Conditions that could mitigate security concerns:

20.(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

20.(b) the conditions 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;

20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

20. (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

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.

Condition 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 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 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, dishonesty or conduct that 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 regard to his personal conduct, Applicant was truthful and candid with the Government on his security clearance application when he answered the questions concerning his finances. Since he has disputed each of the debts alleged, and they were removed from his credit report, he answered the questions correctly. I find that he did not conceal this information from the Government on the application.

The Government has met its initial burden of proving that the Applicant has been financially irresponsible (Guideline F). The 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.

Here, Applicant's history of financial indebtedness has been mitigated. His separation and divorce, and subsequent court order for child and spousal support generated some financial confusion. In addition, as a victim of identity theft, his credit was blemished through no fault of his own. He has since cleared this up and his finances are under control. He is, and has been, making regular systematic payments in compliance with the court order to pay child and spousal support. He has not missed a payment since he was made aware of the court order. His credit report shows that he is current with all of his financial obligations and is in good standing. He has demonstrated that he is fiscally responsible. He has shown that he can and will resolve his debts. He has further shown an ability to live within his means. At this time, there is sufficient evidence of financial rehabilitation. Applicant has demonstrated that he can properly handle his financial affairs.

Applicant has met his burden of proving that he is worthy of a security clearance. 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. Mitigating Conditions 20.(a) *the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*; 20.(b) *the conditions 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*; 20.(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, and 20.(e) *the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue* 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 poor judgement, untrustworthiness, unreliability, a lack of candor, an unwillingness to comply with rules and regulations,

and/or other characteristics indicating that the person may not properly safeguard classified information.

I have considered all of the evidence presented. It mitigates the negative effects of his financial indebtedness and his personal conduct, and the effects 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 Paragraphs 1 and 2 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.
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