



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 14-01313
)
Applicant for Security Clearance)

Appearances

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

May 26, 2015

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (E-QIP) on July 2, 2012. (Government Exhibit 1.) On August 18, 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 15, 2014, and he requested an administrative hearing before a Defense Office of Hearings and Appeals Administrative Judge. This case was re-assigned to the undersigned Administrative Judge on February 24, 2015. A notice of hearing was originally issued on October 27, 2014, and the hearing was scheduled for December 5, 2015. Applicant failed to appear at the hearing and was defaulted. On January 30, 2015, the file was returned to DOHA Headquarters for administrative closing. Applicant subsequently contacted DOHA stating that although he received the Notice of Hearing in a timely fashion, he failed to open the attachment that set forth the date and time of his hearing, and was

therefore unaware of the fact that he had missed the date. Based upon this showing of good cause, Applicant's file was reopened on February 20, 2015, and re-assigned to the undersigned on February 24, 2015. The hearing was rescheduled for February 27, 2015. 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 to allow the Applicant the opportunity to submit additional documentation. Applicant submitted 25 Post-Hearing Exhibits referred to as Applicant's Post-Hearing Exhibits A through W, were admitted without objection. The official transcript (Tr.) was received on March 23, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

Applicant is 48 years old and married with two adult children. He has a high school diploma. He holds the position of Lead Technical Integrator 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 July 4, 2012; July 11, 2013; October 20, 2014; and March 15, 2015, reflect that at one time Applicant was indebted to each of the creditors set forth in the SOR, in an amount totaling approximately \$50,000. (Government Exhibits 5, 6, 7 and 8.)

Applicant joined the Navy at the age of eighteen. He served for twenty years and received an Honorable Discharge in 2002. He retired as a Chief Petty Officer, E-7. During his military career, he received a number of awards and commendations, including two Navy Commendation Medals; three Navy Achievement Medals; five Navy Good Conduct Medals; and two National Defense Service Medals, among others. (Applicant's Post-Hearing Exhibits Q and R.) Upon his military retirement, Applicant began working as a civilian in the defense industry. He has held a security clearance for the past thirty years and has never had a violation of security policy. (Tr. p. 28, and Applicant's Post-Hearing Exhibits Q and R.)

Applicant filed for Chapter 13 Bankruptcy in April 2010. He stated that it was directly related to his purchase of a house in 2005, which in hindsight he could not afford. He secured a loan that he could barely afford with the plan of being able to refinance in two years for a better one. The housing market took a dip within months of the purchase, and refinancing was not an option. The balloon payment became due and Applicant could not afford to pay it. After five years of trying to keep up financially with the house, he owed more on the house than originally financed and it was valued at about 50% of the original price. By 2010, the house was foreclosed upon.

He paid his debtors for about two years through his Chapter 13 when his wife lost her job. She also underwent multiply surgeries on her knees and foot. Her salary was about 30% of their household income. Applicant could no longer afford the \$2,500 monthly that was allotted to the creditors. Applicant contacted his attorney who recommended that he dismiss the Chapter 13 and file a Chapter 7. Applicant filed a Chapter 7 bankruptcy in November 2013. His debts were discharged in February 2014.

Applicant failed to file both his state and Federal income tax returns for tax years 2010, 2011, and 2012. He testified that he and his wife were overwhelmed with the loss of their house and having to file bankruptcy. About a year ago, when his security clearance investigation began, he filed all of the returns in question. (Tr. p. 34.) Applicant provided copies of both his state and Federal income tax returns that were filed for each year in question. (Applicant's Post-Hearing Exhibits A through J.)

Applicant admits that he also became indebted to the state and Federal government for back taxes for tax years 2010, 2011 and 2012. He currently owes the Internal Revenue Service approximately \$38,824.38 in back taxes owed for 2010, 2011, and 2012. He has agreed to a voluntary wage garnishment of \$252.50 every two weeks that is automatically deducted from his payroll check, for a total of \$6,565.00 annually. (Applicant's Post-Hearing Exhibit K.) Applicant also notes that his Federal refund is \$2,693 this year. This refund will also go toward his indebtedness. At this rate the balance of his account to the IRS will be paid in full in about 4.2 years.

Applicant admits that he currently owes the state approximately \$10,526.94. He agreed to a voluntary wage garnishment of \$244 every two weeks, for a total of \$6,344 annually. (Applicant's Post-Hearing Exhibit K.) This year he is expecting to receive a state refund in the amount of \$1,954. This will also go toward his indebtedness. As this rate his balance will be paid in a little over a year. Applicant learned from the state tax authority that once his state debt is paid off, future state returns will be automatically be applied to his Federal debt.

Applicant currently earns about \$103,000 annually. He receives about \$23,000 annually in military retirement benefits. Applicant is comfortably paying his monthly

expenses and paying college tuition for his two daughters. (Tr. p. 43.) He has no savings.

A letter from the Applicant's command is highly favorable. (Applicant's Post-Hearing Exhibits L .)

Other letters of recommendation from professional colleagues and friends attest to his professionalism, hardworking nature, integrity, good judgment, honesty, loyalty to the United States, leadership abilities and his astute ability to properly protect classified information. (Applicant's Post-Hearing Exhibits M through P.)

Applicant's performance evaluation, dated March 2013, reflects an overall assessment of "exceptional performance." (Applicant's Post-Hearing Exhibit S.)

On several occasions, Applicant has been recognized for his outstanding support to the mission. (Applicant's Post-Hearing Exhibits T and U.) Applicant was also on the Dean's List while attending college. (Applicant's Post-Hearing Exhibit W.)

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 a combination of things caused his financial indebtedness, some of which were unexpected, others he caused himself. In 2005, when Applicant purchased his house, he spent more on it than he could afford, and obtained a bad loan with a balloon payment that he could not refinance. His house was ultimately foreclosed upon. About this time, his wife lost her job, and had medical problems that had to be addressed. Applicant complicated matters by failing to file his state and Federal income tax returns, and became delinquently indebted for back taxes. Last year, when his security clearance background investigation began, Applicant realized the importance of keeping his finances in order and maintaining fiscal responsibility. He immediately began working to get his financial matters in order. Since then, he has made significant progress toward resolving his debts. He filed for Bankruptcy and discharged a number of debts. He filed all of the state and Federal income tax returns in question, and promises to always file his future returns in a timely fashion. And, he has set up voluntary garnishments with both taxing authorities to pay the back taxes he owes.

As stated, documentation provided by the Applicant shows that he has filed the income tax returns in question and is paying his back taxes owed to the state and Federal government. 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.(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 military service and decorations, his favorable letters of recommendation, and his positive performance evaluation. 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 Applicant.
Subpara. 1.a.: FOR Applicant.
Subpara. 1.b.: FOR Applicant.
Subpara. 1.c.: FOR Applicant.
Subpara. 1.d.: FOR Applicant.
Subpara. 1.e.: FOR Applicant.
Subpara. 1.f.: FOR 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