



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-02031
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Department Counsel
For Applicant: Ryan C. Nerney, The Edmunds Law Firm

February 25, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing, (e-QIP) on November 3, 2013. (Government Exhibit 1.) On May 18, 2015, 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) detailing the security concerns under Guideline F for Applicant. The SOR set forth the reasons why DoD adjudicators 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 Applicant and recommended referral to an administrative judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR on July 15, 2015, and he requested a hearing before a Defense Office of Hearings and Appeals administrative judge. This case was assigned to this administrative judge on October 20, 2015. A notice of hearing was issued on October 21, 2015, scheduling the hearing for November 18, 2015. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. Applicant called four witnesses and presented fourteen exhibits, referred to as Applicant’s Exhibits A through N, which were

admitted without objection. He also testified on his own behalf. The record remained open until close of business on December 9, 2015, to allow Applicant to submit additional supporting documentation. Applicant submitted no Post-Hearing Exhibits. The official transcript (Tr.) was received on November 30, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

Applicant is 45 years old and married with two children. He has a high school diploma, has completed several Navy technical schools, and has completed two college courses. He holds the position of Network Engineer for a defense contractor. He is seeking to obtain a security clearance in connection with this employment.

The Government opposes 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 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 allegation 1.a., and admitted in part, and denied in part, allegations 1.b., and 1.c set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) Credit reports of Applicant dated December 10, 2013, May 30, 2014, and September 30, 2015, reflect that Applicant was at one time indebted to each of the creditors set forth in the SOR, in an amount totaling approximately \$200,000. (Government Exhibits 3, 4, and 5.)

Applicant served on active duty in the United States Navy from August 1989 to August 1995. The highest rank he achieved was E-5, Petty Officer Second Class. (Applicant's Exhibit F.) He then served in the inactive Navy Reserve from August 1995 to July 1996, and the active Navy Reserve from July 1996 to January 1997. He has held a security clearance for about 23 of the last 25 years. Applicant and his wife were married in 2001 and have been married now for fourteen years. They have two minor daughters.

Prior to 2007, Applicant had no significant financial problems. In 2007 Applicant joined his friend's investment group with the idea of it being a relatively, "hands-off" investment. Applicant's friend told Applicant that he would take care of the interaction with the property manager, and the property manager would collect the rent from the tenants and pay the mortgages. Applicant liked the idea, and thought it to be a good investment. He purchased two rental properties out of state, with the understanding that the property manager had renters for each property. To purchase the houses, Applicant paid a \$5,000 deposit for each property that he borrowed from his equity line

of credit on his personal residence. Applicant had no written contact about this investment agreement between him and his friend, as everything was done verbally. After purchasing the property, Applicant learned that the property manager did not have renters for either property. Applicant made one mortgage payment on each property, but without rental income he could not continue to make the mortgage payments on either property. At some point, Applicant also learned that the property manager was living in one of the properties, and was not paying any rent at all. Applicant wanted to sell the properties. Before he was able to get them on the market, the lenders began to foreclose on both properties. By 2008, both houses had been foreclosed upon. In 2009, Applicant received Internal Revenue Service Form 1099-A's from both lenders who held the first mortgages on both of the properties. (Applicant's Exhibits D and E.) The debt on each of the first mortgages was forgiven as a result of the foreclosures. Applicant reported the foreclosures to his company security officer. Applicant also became indebted to the lender holding the second mortgage on one of the properties. The loan showed that it was 120 days past due in the approximate amount of \$122,000 with a total outstanding balance of \$198,000. Applicant ignored the debt that was owed to the lender holding the second mortgage.

From 2007 to 2013, Applicant took no affirmative steps to resolve his indebtedness. After receiving the SOR, realizing that his security clearance was now in jeopardy, Applicant began to work to resolve this debt. In fact, Applicant recently sent letters to the lender offering to settle the matter at a reduced amount for a lump sum rather than trying to set up a payment plan. (Tr. p. 61.) Applicant recently made an offer to settle the matter for \$21,000. He took a loan against his 401(k) to do it. He is waiting for the lender's response. (Applicant's Exhibit J.) In any case, Applicant intends to immediately resolve the debt once they arrive at a settlement amount.

Applicant's personal financial statement indicates that his net monthly salary is \$5,146. His monthly expenses total \$2,443, and his monthly debt payments including home mortgage total \$2,213. He and his wife have about \$2,000 in revolving credit accounts. They are left with a net remainder of \$490. (Applicant's Exhibit K.) Applicant also has company stock and receives a dividend check from them quarterly of about \$90. Applicant has \$316,000 in his 401(k) after borrowing from it to pay the second loan. Applicant testified that he has no intentions of ever getting involved in any future real estate investment of any sort. (Tr. p. 89.) His finances appear stable.

Four witnesses testified on behalf of Applicant. Three of the individuals are coworker's and friend's of Applicant, one of them was at one time his supervisor. All of them hold a security clearance, and have known Applicant for over ten years. They each testified to Applicant's serious work ethic, honesty, reliability and trustworthiness. They believe Applicant to be of overall good character and they have no reservations about him holding a security clearance. Applicant's current supervisor, who also holds a security clearance testified that Applicant is an excellent employee, who is honest and trustworthy and a true asset to the company. He also recommends Applicant for a security clearance without reservation.

Applicant's performance reviews for the years 2012 through 2014 are all favorable. (Applicant's Exhibit M.) Letters of recommendation from professional associates, colleagues and friends of Applicant, including the Vice President of Programs indicate that Applicant is considered to be a valuable employee who is highly trusted to do the right things at all times. His technical skills, serious nature and willingness to go the extra mile for the customer is greatly respected by the company. Applicant is described as upstanding, honest, trustworthy, and quite knowledgeable. His professional and personal performance on the job is excellent and deserving of a higher pay grade. He is highly recommended for a security clearance. (Applicant's Exhibits L.)

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 that 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 a reasonable and logical basis in the evidence of record. The judge cannot draw inferences or conclusions based on evidence that is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order adverse to an applicant 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 excessive financial indebtedness 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 continued 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 Applicant has had excessive financial indebtedness (Guideline F) and the totality of this evidence indicates poor judgment, unreliability and untrustworthiness on the part of Applicant. Because of the scope and nature of Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility. Considering all of the evidence, Applicant has introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guideline F of the SOR.

The evidence shows that Applicant made a poor decision to purchase investment properties without sufficient expertise, knowledge, research, or background in the matter. As a result, when things did not go as expected and he could not afford to pay the mortgages, two of the investment properties were foreclosed upon. Applicant also became indebted to the lender holding the second loan on one of the properties in the amount of \$198,000. From 2007 to 2013, Applicant did nothing to resolve this delinquency, hoping that the statute of limitations would run. After receiving the SOR, realizing his security clearance was in jeopardy, Applicant decided it best to settle the matter with the lender. Applicant is currently negotiating that settlement amount and plans to settle the matter immediately. In the event that he does not resolve the debt, his security clearance will again be in jeopardy. Considering all of the evidence, Applicant has introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

In regard to 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 are also applicable. Accordingly, I find for Applicant under Guideline F (Financial Considerations).

I have also considered the “whole-person concept” in evaluating Applicant’s eligibility for access to classified information. Applicant has worked in the defense industry for many years and has never incurred a security violation. He has made a good-faith effort to resolve his debts and has demonstrated honesty and trustworthiness.

Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole supports a whole-person assessment of good judgment, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, and/or other characteristics indicating that the person may properly safeguard classified information. A security clearance is a privilege, not a right. In order to meet the qualifications for access to classified information, it must be determined that the applicant is and has been sufficiently trustworthy on the job and in his everyday life to adequately protect the Government’s national interest. Overall, based upon the seriousness of the conduct outlined here, this applicant has demonstrated that he is sufficiently trustworthy, and does meet the eligibility requirements for access to classified information. Accordingly, I find for Applicant under Guideline F (Financial Considerations).

On balance, it is concluded that Applicant has overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding for Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the SOR.

FORMAL FINDINGS

Formal findings for or against 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.

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 Applicant. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge