



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



In the matter of:)
)
-----) ISCR Case No. 14-03390
)
Applicant for Security Clearance)

Appearances

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

January 22, 2015

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (E-QIP) on November 4, 2013. (Government Exhibit 1.) On August 7, 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 12, 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 October 27, 2014. A notice of hearing was issued on October 27, 2014, and the hearing was scheduled for December 4, 2014. At the hearing the Government presented seven exhibits, referred to as Government Exhibits 1 through 7, which were admitted without objection. The Applicant presented two exhibits, referred to as Applicant's Exhibits A and B, which were also admitted into evidence without objection. He testified on his own behalf. The record remained open until close of

business on December 14, 2014, to allow the Applicant the opportunity to submit additional supporting documentation. The Applicant submitted 12 Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits 1 through 12, which were admitted without objection. The official transcript (Tr.) was received on December 15, 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 two sons. He has a Bachelor of Arts degree in Political Science, and a Master's degree in Business Administration. He holds the position of Integrator or Project Manager 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 allegations set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated December 6, 2013; and October 20, 2014, reflect that Applicant was indebted to the state and federal government for back taxes owed totaling approximately \$20,000. (Government Exhibits 5 and 6.)

Applicant accepted an ROTC scholarship in college, and was commissioned in 1983. He served honorably as a pilot in the United States Navy for 20 years before retiring as a Lieutenant Commander in June 2003. During his military career he received numerous awards, decorations and commendations for his outstanding service. (Applicant's Post-Hearing Exhibit 8.) Applicant was never subject to any military discipline, nor did he ever violate any Navy rules or regulations. Applicant was unemployed for only seven days before he was hired on with a defense contractor. Applicant has held a security clearance for almost 35 years without incident. (Tr. p. 30.)

Until 2009, Applicant had a history of being financially responsible and paying his bills on time. He has never filed bankruptcy, had a repossession, short sale, or otherwise defaulted on a loan. However, from 2009 through 2012, Applicant failed to file both his state and federal income tax returns in a timely fashion. He explained that during this period, he was living beyond what he could afford, and did not have the money to pay his taxes. He believes the real problem was the transition from living on a military budget in various low cost areas, to receiving a significant pay increase as a civilian, but living in a higher cost area. He did not watch his finances closely. He

allowed his credit load to grow without managing it properly, and was not earning enough in retirement pay or his civilian job to afford his cost of living. Each year his income tax withholding was short almost \$5,000.

Applicant eventually consulted a tax advisor for help. He now realizes how wrong he was not to file his income tax returns. When he did file, he discovered that the state owed him refunds all four years. So the amount he paid to the state in fines for failing to file, would have been money he could have used to pay what he owed to the Internal Revenue Service (IRS) had he filed on time.

Since hiring his tax advisor, Applicant has prepared and filed both his state and federal income tax returns for tax years 2009, 2010, 2011 and 2012. (Applicant's Post-Hearing Exhibits 2, 3 and 7.) Applicant has also paid all of the back taxes he owed to the state and the IRS. Documentation from the IRS shows that he paid \$6,914.23 on November 28, 2014, for 2011 back taxes; and he paid \$6,680.05 to the IRS on November 28, 2014, for 2012 back taxes. (Applicant's Exhibit A.) Applicant also submitted documentation confirming tax payments he made to the state. (Applicant's Post-Hearing Exhibit 6.)

Applicant testified that it is his tax advisor's belief that he is due a refund in the amount of approximately \$5,800, minus any penalties for failing to file in the first place. (Tr. p. 51.) To prevent this problem from ever recurring, Applicant is now committed to working closely with his tax advisor to always properly adjust his withholdings to ensure that sufficient taxes are taken out of his paycheck to cover any future tax liability.

Prior to the hearing, Applicant had been negotiating for a promotion on his job that he recently received. (Applicant's Post-Hearing Exhibit 10.) The promotion will increase his pay to \$165,882.79 annually. (Applicant's Exhibit B.) In addition, he receives \$37,000 annually from his military retirement. Together, his annual income now exceeds \$200,000. Applicant is current with all of his financial obligations and states that he can comfortably live on this income without difficulties or delinquencies. He also has a 401(k) with his company that contains about \$37,000. (Applicant's Post-Hearing Exhibit 11.)

Excerpts from the Applicant's military records, specifically his fitness reports reflect impressive ratings indicative of outstanding performance on the job. He possessed all traits for success and was recommended for early promotion. (Applicant's Post-Hearing Exhibit 9.)

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;
- 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 adjudication 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 that 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 the Applicant, a retired Naval Officer, and current project manager for a defense contractor began having financial problems when he transitioned from living on a military budget to a civilian-pay lifestyle. He failed to file his state and federal income tax returns from 2009 through 2012, because he did not have the money to pay his taxes. He became delinquently indebted to the state and IRS for back taxes, and the problem escalated over the years. Recently, Applicant has been proactive in handling this problem. He hired a tax advisor, followed her advice, filed his state and federal income tax returns for tax years 2009 through 2012, and paid all of his outstanding back taxes. He is working closely with his tax advisor to prevent any tax problems in the future. Applicant is current on all of his bills, including his credit cards, mortgage, utilities and children's student loans.

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 does not continue to meet his financial obligations, or if he does not completely resolve any current outstanding debt, his security clearance will be immediately in jeopardy. 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 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 Applicant's most impressive 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 E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.
Subpara. 1.a.: For the Applicant.
Subpara. 1.b.: For the Applicant.

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