



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 11-02257
)
)
Applicant for Security Clearance)

Appearances

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

February 29, 2012

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on September 27, 2010. (Government Exhibit 1.) On August 3, 2011, the Defense Office of Hearings and Appeals (DOHA), 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 on August 18, 2011, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 30, 2011. A notice of hearing was issued on December 7, 2011, and the hearing was scheduled for January 19, 2012. At the hearing the Government presented four exhibits, referred to as Government Exhibits 1 through 4 that were admitted without objection. The Applicant presented five exhibits, referred to as Applicant's Exhibits A through E that were admitted without objection. He also testified on his own behalf. The Applicant requested that the record remain open to submit additional documentation. The record remained open until close of business on

January 30, 2012. The Applicant submitted four Post-Hearing Exhibits consisting of twenty-six pages, referred to as Applicant's Post-Hearing Exhibits F through I. The official transcript (Tr.) was received on January 25, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

The Applicant is 48 years old and has a Ph.D. in Physics. He is employed as a Systems Engineer with a defense contractor and is seeking to obtain a security clearance in connection with his 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 denies each of the allegations set forth in the SOR. (See Applicant's Answer to SOR.) However, he admits that he was at one time indebted to the respective lenders for two delinquent loans on real property. Credit Reports of the Applicant dated October 19, 2010 and May 18, 2011, collectively reflect that the Applicant was indebted to these creditors. (Government Exhibits 2 and 4.)

The Applicant graduated from college in 1999. He joined the defense industry in 2002, and has held a security clearance since then. He has been married for thirty-three years and has two children.

In 2006, the Applicant's wife was a real estate agent and came across a condo for sale that was in probate that the Applicant thought would be a good short term investment. (Tr. p. 49.) He thought they could purchase the house for a good price, use the money from their home equity loan to fix it, and then sell it for a profit. (Tr. p. 33.) Unexpectedly, the housing market crashed, and he was unable to sell the condo. Although it was difficult, for the next two and a half years, from 2006 to mid 2009, the Applicant continued to make the monthly mortgage payments of \$1,200. He rented the condo out until July 2008, but was several hundred dollars short of the mortgage payment. In the fall of 2008, his son started college and the Applicant had extra expenses for tuition. It was at this time that his wife lost her job due to the lack of sales in the housing market. The Applicant tried to refinance the mortgage on the house but was unsuccessful. Since he was current on his payments the bank would not entertain a loan modification.

In 2010, upon the advice of the bank, the Applicant stopped making payments on the mortgage and tried to short sale the house. The short sale was approved in October 2010. Applicant's loan history shows that he kept current with the mortgage payments until he was advised by the bank to allow the account to fall into arrears.

The first loan on the property placed into collection in the amount of \$413,000 was settled in the short sale. (Applicant's Post-Hearing Exhibit B and E.) The second loan on the property in the amount of \$86,000 went into collection. The Applicant recently settled the debt in the amount of \$15,000. (Tr. p. 70 and Applicant's Post-Hearing Exhibit F.)

The Applicant believes that he may also have a tax break because of the money he invested in the property. (Tr. p. 52.) In the event that he has any tax liability as a result of the transaction, he has sufficient monies in his 401(K) that he can pay the debt. (Tr. p. 55, 73, and Applicant's Post-Hearing Exhibits G and H.) His tax accountant told him that he will not have a tax liability from settling the second loan on the property.

The Applicant has no other delinquent debt. (Tr. p. 64.) He pays \$3,000 monthly on his mortgage for his personal residence that remains current. He takes home after taxes approximately \$7,000 monthly.

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 circumstances largely beyond the Applicant’s control, namely, the collapse in the housing market, coupled with the Applicant’s poorly timed real estate investment decision, caused his financial indebtedness. The problems that surfaced were completely unforeseeable and isolated. However, throughout the real estate transaction, the Applicant exercised good judgment. When the mortgage payments adjusted and he could no longer make his payments, he tried to rent it. He then tried to refinance the mortgage to be able to afford it. When that was not successful, he tried to short sale it, and was eventually successful. As a result of this experience, he has learned that he will never engage in a real estate investment again without doing the proper research. Throughout this period of financial hardship, he was and continues to be extremely diligent in doing his part to prevent foreclosure. He acted

responsibly and with integrity under the circumstances. He did the best he could under the circumstances, and as much as humanly possible to resolve his financial problems. In regard to his primary residence, he is current on his payments.

Under the particular circumstance of this case, the Applicant has made a good faith effort to resolve his past due indebtedness. He has a stellar record demonstrating that he has always paid his bills on time. But for his investment short sale, his record is unblemished. He understands the importance of paying his bills on time and living within his means. He also knows that he must remain fiscally responsible in the future. There is sufficient evidence of financial rehabilitation. The Applicant has demonstrated that he can properly handle his financial affairs and that he is fiscally responsible. 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 the Applicant's favorable testimony, recommendations, and dedicated work history. They mitigate 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

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