



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



In the matter of:)
)
-----) ISCR Case No. 11-13463
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Ryan C. Nerney, Attorney At Law
The Edmunds Law Firm

April 10, 2015

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (E-QIP) on May 25, 2011. (Government Exhibit 1.) On July 2, 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 July 18, 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 February 10, 2015. A notice of hearing was issued on February 19, 2015, and the hearing was scheduled for March 19, 2015. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant presented eight exhibits, referred to as Applicant's Exhibits A through H, which were also admitted into evidence without

objection. He also testified on her own behalf. The official transcript (Tr.) was received on March 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 34 years old and is separated with two children. He holds the position of Aviation Technician 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 denied the allegation as written, but admitted the underlying facts to be true that are set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated June 9, 2011; December 3, 2013; and March 13, 2015, reflect that Applicant is indebted to the sole creditor set forth in the SOR. (Government Exhibits 3, 4 and 6.)

Applicant joined the United States Marine Corps in April 1998, when he was seventeen years old. He served for five years and six months, until October 2003, when he was honorably discharged as an E-4, Corporal. (Applicant's Exhibits D and E.) During his military career, he received a number of awards and commendations that include the Navy and Marine Corps Achievement Medal for Meritorious Service, the Marine Corps Good Conduct Medal, and various unit and campaign awards, among others. (Applicant's Exhibit A, B, C, D, E and F.)

Following his military career, he immediately began employment with his previous employer, a defense contractor. In 2003, Applicant applied for and received a security clearance. In March 2009, Applicant purchased a house for his family. He was gainfully employed until November 2010, when he was unexpectedly laid off through no fault of his own. Applicant explained that the contract he was working on was sold to a lower bidder. Applicant immediately began searching for work. Applicant was unemployed for about seven months. During the seven months of unemployment, Applicant went to school, and lived off of his unemployment benefits and his Montgomery GI bill. The income he received from these two sources was insufficient to pay his bills that included the mortgage, his truck payments, utilities, and food his children. To seek some relief, Applicant got a job where he could, at a pizza shop, and applied for a loan modification on his mortgage payment. He renewed his loan modification application on three separate occasions before he was denied. He

was told that his income from the GI bill and his unemployment benefits would not qualify for purposes of satisfying the income requirement for the loan modification. Throughout the loan modification process there was a series of mistakes, misunderstandings, misrepresentations and misplaced or lost loan modification applications. Applicant claims that at some point he was led to believe that the loan modification was approved. He was subsequently told to the contrary. Applicant remained unemployed until he was hired by his current employer in 2011. He immediately contacted his lender and told them that he had obtained employment. At that time he was asked to complete another loan modification application, and assured that this time there such be no problem. For whatever reason, the loan modification did not go forward and the Applicant's house was foreclosed upon.

In 2012 Applicant and his wife separated. This caused additional financial hardship for the Applicant. So much so, Applicant was forced to move back in with his mother. To complicate matters, in February 2014, Applicant was laid off from his current employment, but is subject to rehire if he receives his security clearance.

Due to the foreclosure, Applicant's credit report shows that he was indebted to a bank for a mortgage account that went into foreclosure with a total balance of \$209,064, and a deficiency balance of \$116,537. Applicant has contacted the lender and they agreed that he does not owe them any money. Applicant presented a Trustee's Deed Upon Sale notice, stating that the property in question was sold at auction on May 23, 2011, and Applicant was released of any liability through the Deed of Trust. (Applicant's Exhibit A.) To show that the property was wrongfully foreclosed, Applicant received two checks from the National Mortgage Settlement Administrator for his inconvenience. (Applicant's Exhibit B.)

Applicant's current financial situation is in good standing. He is current with all of his regular monthly expenses and has paid off most of his wife's debts. He has just under \$10,000 in his savings account. His mother was recently killed and he expects to inherit some of her estate.

Letters of recommendation submitted on behalf of the Applicant from, a Senior Chief Petty Officer, a Director of Training, and another professional colleague all indicate that Applicant is a well-respected employee throughout the company. He is an exemplary employee who has also proven his commitment to his country. He is described as professional, self-motivated, detailed, intelligent, trustworthy, valuable, and honest. As a war-tested leader, he is considered someone to highly trust. Applicant is recommended for a security clearance. (Applicant's Exhibit H.)

While on active duty, Applicant has received a number of letters of appreciation and other awards for his dedication and outstanding service to duty. (Applicant's Exhibit G.)

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, 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 circumstances largely beyond the Applicant's control contributed, if not solely caused, his financial problems. To begin with, Applicant had always paid his bills on time until he was laid off of his job. Unable to find a job right away, he did his best to make ends meet, but was unable to save his house. About this same time, he and his wife separated which caused more financial difficulties. Applicant has been in constant contact with his mortgage lender and was told that since the house was sold at auction, he does not owe them anything. Applicant is waiting the outcome of this case to pursue his divorce since it will cost him additional monies to complete the process.

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. There is clear evidence of financial rehabilitation. Applicant is remorseful for having been put in this situation. In the event that he does not continue to meet his financial obligations, his security clearance will be immediately in jeopardy. However, at this time, 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, supports 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 the favorable letters of recommendation. 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.

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