



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 12-02548
)
Applicant for Security Clearance)

Appearances

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

April 5, 2013

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (E-QIP) on June 8, 2011. (Government Exhibit 1.) On July 27, 2012, 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 October 8, 2012, and he requested an administrative hearing before an administrative judge. This case was assigned to the undersigned on January 8, 2013. A notice of hearing was issued on January 16, 2013, and the hearing was scheduled for February 13, 2013. At the hearing the Government presented nine exhibits, referred to as Government Exhibits 1 through 9, which were admitted without objection. Applicant presented five exhibits, referred to as Applicant's Exhibits A through E, which were admitted without objection. He also testified on his own behalf. The record remained open until close of business on February 19, 2013, to

allow Applicant to submit additional documentation. He submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A, which was admitted without objection. The official transcript (Tr.) was received on February 22, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

Applicant is 60 years old and married with four adult children. He has a high school diploma and some adult training. He is employed with a defense contractor as an Aircraft Mechanic and 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 each of the allegations set forth in the SOR under this guideline. Credit Reports concerning Applicant dated July 5, 2007; June 18, 2011; May 18, 2012; July 23, 2012; December 14, 2012; and February 12, 2013, reflect that Applicant was at one time indebted to each of the creditors set forth in the SOR, in an amount totaling almost \$20,000. (Government Exhibits 4, 5, 6, 7, 8, and 9)

Applicant received a security clearance for the first time in 2007. He has never had a security violation of any sort. Prior to 2011, Applicant had no serious financial problems. He lived within his means and paid his bills on time. In 2011, after the deaths of his mother-in-law and father-in-law, he fell behind on his bills. His wife was forced to take time off from work for which she was not paid, which reduced the family income. It was also about this time that his mortgage payment and property taxes were increased to the point that he could no longer afford them. (Government Exhibit 3.) He also admitted that for about a year he and his wife were living beyond their means. As a result, the following debts alleged in the SOR became delinquent and owing.

A delinquent credit card debt in the amount of \$6,000 became outstanding. (Tr. p. 36.) A dental bill owed to a creditor in the amount of \$343.00 became outstanding. (Tr. p. 36-37.) A delinquent credit card debt owed to a creditor in the amount of \$9,000 became outstanding. (Tr. p. 38.) A delinquent home mortgage in the amount of \$3,600 became outstanding. (Tr. p. 38.) A delinquent second on a mortgage loan in the amount of \$694.00 became outstanding. Each of the debts, except one of the mortgage loans have been included in a debt consolidation plan. (Applicant's Exhibits A and D.) Applicant testified that his loan modification was approved on his personal residence

and he included the delinquent debt in the new loan. He has remained current with his home mortgage. Applicant submitted documentation showing that he has paid off other delinquent debts not alleged in the SOR. (Applicant's Exhibit E.)

Applicant testified that he spoke to an attorney about filing for Bankruptcy but decided against it. Unable to get cooperation from his creditors with payment negotiations on his own, on August 30, 2012, he hired a debt consolidation company to assist him in resolving his debts. (Applicant's Exhibits A and D.) Since August 2012, he has been paying into an escrow account in the amount of \$125.00 a week for the purpose of disbursing funds toward resolving his debts. At the time of the hearing he had paid about \$500.00. (Tr. p. 48.) He believes that the company is making payment arrangements with his creditors, and they estimate that it will take the Applicant five years to resolve his debts.

Applicant's Post-Hearing Exhibit is a letter of participation from the debt consolidation company that shows each of Applicant's creditors, (that includes some not alleged in the SOR), the estimated balance owed on the account, and the account number. It appears that Applicant has paid off three of his delinquent debts so far.

A letter from Applicant's manager indicates that in his opinion, Applicant has been a positive example of what a Technician should aspire to become at all levels. He takes pride in his work, accomplishes tasks with great success, has good attendance, and never complains about his job assignments. He is considered a mentor and role model and a true asset to the organization. (Applicant's Exhibit B.)

Other letters of recommendation from his lead at work, and family friends attest to Applicant's great character and integrity. He is considered to be honest and trustworthy, respectful, compassionate, and a good worker. He is recommended for a security clearance. (Applicant's Exhibit C.)

Applicant's personal financial statement indicates that he and his wife bring home between \$6,000 and \$7,000 monthly. Incorporating the debt consolidation plan, at the end of the month, they are able to pay their debts and even save some money. He further testified that he would never do anything to jeopardize our national security or the lives and safety of our service member. (Tr. p. 54.)

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 obligation.

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 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 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 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 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 Applicant has been financially irresponsible (Guideline F). This evidence indicates possible 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.

The evidence shows that Applicant became financially indebted in 2011 for several reasons. After several deaths in his family, related expenses, and his wife taking time off from work, his bills began to snowball. In addition, he candidly admitted that he and his wife were, for about a year, living beyond their means. For the past year, he has been working hard to resolve his indebtedness. He hired a debt management company, and set up an escrow account that he is contributing to on a weekly basis in order to have sufficient funds available to pay his delinquent debts. One by one, the debt consolidation plan is attacking the bills and resolving them. Regardless of whether he receives a security clearance, Applicant testified that he plans to continue following the plan which will take five years in order to become debt free. He is now living on and following a strict financial budget.

He understands that he must remain fiscally responsible at all times if he is to hold a security clearance. He has made a good-faith effort to resolve his past-due indebtedness. He has not incurred any new debt and is living within a budget. He has clearly demonstrated that he can properly handle his financial affairs. There is clear evidence of financial rehabilitation and he must continue to follow through with his plan and resolve his debts. 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 (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 Applicant under Guideline F (Financial Considerations).

I have also considered the "whole-person concept" in evaluating 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 favorable letters of recommendation and his favorable 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 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.
Subpara. 1.d.: For Applicant.
Subpara. 1.e.: 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