



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



In the matter of:)
)
-----) ISCR Case No. 12-03819
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Department Counsel
For Applicant: Catie E. Young, Attorney At Law; Griffith, Young and Lass

August 29, 2014

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (E-QIP) on November 6, 2008. (Government Exhibit 1.) On February 4, 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 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.

The Applicant responded to the SOR on April 3, 2014, and he requested an administrative hearing before a Defense Office of Hearings and Appeals Administrative Judge. This case was assigned to the undersigned Administrative Judge on May 2, 2014. A notice of hearing was issued on May 8, 2014, and the hearing was scheduled for June 13, 2014. At the hearing the Government presented eight exhibits, referred to as Government Exhibits 1 through 8, which were admitted without objection. The Applicant presented thirty exhibits, referred to as Applicant's Exhibits A through DD, which were also admitted into evidence without objection. He also testified on his own behalf. The record remained open until close of business on June 20, 2014, to allow

the Applicant to submit additional documentation. The Applicant submitted four Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits EE through HH, which were admitted without objection. The official transcript (Tr.) was received on June 19, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 33 years old and married with two children. He has a Master's degree in Science and holds the position of Systems Engineer 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.

The Applicant admitted each of the two allegations set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated December 9, 2008; January 10, 2012; December 19, 2013; April 29, 2014; and June 6, 2014, reflect that at one time Applicant was indebted to two lenders for delinquent mortgages as set forth in the SOR, in an amount totaling in excess of \$50,000. (Government Exhibits 4, 5, 6, 7 and 8.) Applicant has been employed with his current employer since 2005, and has held a security clearance since 2009 without incident.

Beginning in 2003, Applicant made a series of risky property investments that did not prove to be beneficial to him. Instead of using his savings to make the mortgage payments, Applicant chose to default on the loans. As a result, he became indebted to a bank for a second mortgage loan on his primary residence that was past due in the approximate amount of \$22,667, with a total balance of \$73,729. He also became indebted to a lender for a first mortgage loan on one of his out-of state properties that is past due in the approximate amount of \$4,232, with a total balance of \$46,012.

In 2003, Applicant, who had been a renter, believed he was financially secure enough to purchase a house for his primary residence and wanted to start preparing for future retirement. He purchased the property for \$390,000, and obtained a 80/20, 30 year, fixed rate loan. He borrowed \$10,000 from his parents for the down payment. He found the mortgage payments comfortable and affordable. He made the payments without difficulty for two years, before he decided to refinance the house to do some repairs.

In 2005 Applicant refinanced the house and pulled out \$100,000 in cash that he used for various household repairs. This time, the lender offered him an adjustable rate mortgage that substantially increased his monthly mortgage payments with a balloon payment due in 2010. Applicant was not happy about this, but felt that he had no other choice.

The following year, in 2006, Applicant needed additional monies to finish the repairs, and so he refinanced again. This time, he pulled out \$20,000. Again he was offered another adjustable rate loan. Again, the monthly payment was steep and in order to afford it, the Applicant would have to work substantial overtime per month. Applicant testified that he believed that he would at some later date be able to negotiate and refinance the property before the balloon payment was due on the adjustable rate loan.

In 2007 Applicant realized that he was in trouble with his adjustable rate mortgage, and tried to refinance the loan again, but was turned down. He tried again in 2008, and 2009, but was unsuccessful. In 2010, the adjustable rate mortgage adjusted and the payment on the first mortgage increased by over 50%.

Applicant explained that he did not foresee the decline in the housing market, and became aware of the fact that he was upside down on his home mortgage. In 2012, he was finally approved for a loan modification on the first. The payments offered were \$3,346 per month, at a 23 year term of 7%. Although the payments were higher than he wanted, Applicant decided to accept it. He then applied for a loan modification on the second mortgage. The loan on the second was increased from \$566 monthly to \$746 per month.

Despite the fact that he was having serious financial problems with his primary residence, Applicant started working with some people at work who knew of an out-of-state investment opportunity that would allegedly earn a quick monthly profit. Applicant purchased three out-of-state single-family residences. The terms required that he put \$1,000 down on each house, and the seller carried-back the mortgages. At the time of the purchase, the properties had tenants, and so from 2009 to mid-2010, Applicant received between \$2,000 and \$3,000 dollars in income from the properties. Again, Applicant explained that he did not foresee the extreme downturn in property values, as evident by his declining housing appraisals, and the overall housing market decline. He had problems getting the rents. He tried to short sale one of the properties, and received one offer from a potential buyer, but the bank declined.

In October 2013, on one property, he agreed to a deed in lieu of foreclosure which was completed in December 2013. (Applicant's Exhibits R and S.) He received a Form 1099-C, Cancellation of Debt from the lender. (Applicant's Post-Hearing Exhibit FF.) In regard to the other two out-of-state properties, the Applicant indicates that at this point he is current on the loans, since he has enough in his rental property savings account to continue paying on them for three more months. He has listed them for sale and plans to short sale them soon. A letter from Applicant's Certified Public Accountant

dated June 20, 2014, projects the future tax implications on the properties in the event they are short sold. (Applicant's Post-Hearing Exhibit GG.)

Presently, Applicant is current with the payments on his first mortgage on his primary residence, and currently owes \$25,000 in back payments on the second mortgage. (Applicant's Exhibits N and O.) He recently applied to refinance his primary residence again. (Applicant's Post-Hearing Exhibit HH.) He hopes that the terms of the loan modification will take into account the second loan on the property. Applicant testified that in the event that he is unable to refinance, or if the terms are not affordable, he plans to short sale his primary residence.

Applicant's financial portfolio indicates that his current salary is \$120,000 annually. After he pays his mortgage payments on the first loan, and his other regular monthly expenses, he has little left at the end of the month from his salary. (Applicant's Exhibit M.) He has a 401(k) that contains \$130,000, a pension of \$50,000, and savings accounts that total \$10,000. His wife's retirement account contains about \$26,000. (Applicant's Exhibits X and Y) Applicant has strategically decided not to use the money from those accounts to assist with his mortgages because of the tax implications. (Tr. pp. 66-67.) He testified that if he is to purchase property again sometime in the future, he will put down a much higher down payment, never get an adjustable rate mortgage, and have far less leverage. (Tr. p. 75.)

Numerous letters of recommendation from professional associates of the Applicant's including his immediate supervisor, his security manager as well as other managers, group leaders and engineers attest to his high degree of integrity, responsibility, leadership, honesty and maturity. He is said to consistently follow proper security procedures and has shown a commitment to securing classified information and other sensitive information. He is diligent with his responsibilities and often goes beyond management's expectations to accomplish his duties. He performs his duties in an outstanding manner and is considered a valuable member of their technical team. (Applicant's Exhibits B, C, D, E, F, G, H, I, J, K, and L.)

Performance appraisals of the Applicant for January 2010 to December 2010; January 2011 to December 2011; January 2012 to December 2012; and January 2013 to December 2013 reflect favorable ratings of either meeting or exceeding his job responsibilities in every category. (Applicant's Exhibits Z, AA, BB, CC.)

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:

None.

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 the Applicant made a number of risky property investments that proved to be unsuccessful, and now, even though he has sufficient monies in savings to pay these debts, he chooses to default on the loans for his convenience. Although the real estate market is impossible to predict, if one is having trouble making the payments on one property, common sense would dictate that you

should not purchase another. When he refinanced his primary residence changing the terms of the loan from a fixed rate to an adjustable-rate loan with a balloon adjustment that he could not afford, he did not show sound judgment. While dealing with this debacle, he purchased three more properties, located out-of-state. This investment did not prove lucrative, and he is defaulting on those loans. He has given one of them back to the bank for a deed in lieu of foreclosure, the other two are currently for sale and going to be placed on short sale soon. This pattern of conduct shows an inability to properly handle his finances. In fact, Applicant has not acted reasonably or responsibly in this situation. Furthermore, at this point, these matters have not been resolved and the uncertainty is a risk that the Government cannot take.

In regard to his primary residence, he is also in trouble. Although he is current on the first mortgage, he is at least \$25,000 behind on the second mortgage. Based upon this evidence, it can be argued that since Applicant made some very poor investments, he has decided to strategically default on the loans, particularly the loans on his three investment properties, as well as the second loan on his primary residence, for convenience purposes.

Applicant's Post-Hearing Exhibit EE sets forth an action plan that he intends to follow depending on the situation that plays out. In the event that he is declined a loan modification or offered a loan modification that is not affordable, he will short sale or a deed in lieu of foreclosure on his primary residence and both rental properties. If he is approved for a loan modification that is affordable, he will accept the terms of the modification and he will bring the second mortgage current. This still results in the short sale or a deed in lieu of foreclosure for both rental properties.

From the testimony presented, it is not clear that this is an isolated incident. Applicant's wife already wants to purchase another house and Applicant testified that when he does he will be more careful. Applicant has not received any counseling on how to properly handle his financial affairs that include his primary residence as well as his investments. It is not clear that Applicant understands that he must remain fiscally responsible if he is to hold a security clearance. Applicant has not made a good-faith effort to resolve his past-due indebtedness. When he was having trouble making the payments on his primary residence, he purchased more property, incurring more debt that he could not afford to pay. Applicant's judgment is off, and he has not acted reasonably and responsibly with these mortgages. It is not clear that he has learned from his mistakes, since he has not demonstrated that he can properly manage his financial affairs. There is no evidence of financial rehabilitation. Considering all of the evidence, the Applicant has not 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. After a careful review of the Mitigating Conditions, none of them apply. Accordingly, I find against 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 poor judgement, untrustworthiness, unreliability, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

I have considered all of the evidence presented, including his favorable and numerous letters of recommendation, as well as his favorable performance appraisals. However, in this case, it does not 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 failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against 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: Against the Applicant.
Subpara. 1.a.: Against the Applicant.
Subpara. 1.b.: Against the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge