



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 12-04143
)
Applicant for Security Clearance)

Appearances

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

March 25, 2014

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (E-QIP) on April 17, 2013. (Government Exhibit 1.) On November 19, 2013, 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 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 December 20, 2013, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on February 4, 2014. A notice of hearing was issued on February 5, 2014, and the hearing was scheduled for February 27, 2014. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant presented four exhibits, referred to as Applicant's Exhibits A through D, which were also admitted into evidence without objection. He also testified on his own behalf. The record remained open until close of business on March 10, 2014, to allow the Applicant

to submit additional documentation. The Applicant submitted three Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A through C, which were admitted without objection. The official transcript (Tr.) was received on March 6, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

The Applicant is 39 years old and married. He has a high school diploma, military training, some college, and holds the position of Technical Support 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.

The Applicant admitted the each of the allegations set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated November 4, 2011; April 25, 2013; and January 17, 2014, reflect that at one time Applicant was indebted to each of the creditors set forth in the SOR, in an amount totaling almost \$34,000. (Government Exhibits 4, 5, and 6.)

After graduating from high school, Applicant joined the United States Marine Corps in 1993, where he served for a total of almost fifteen years. During this period, Applicant served on active duty and in the reserves, and received a number of awards and decorations for his achievements. (Tr. p. 34, and Applicant's Exhibit C.) He completed his military service in 2009. Applicant held a security clearance during his entire military career and had no security violations. In May 2002, Applicant was hired by his current employer and has held a security clearance since then without incident.

Applicant's payment history shows that he has always paid his bills on time and has been financially responsible. The three delinquent debts set forth in the SOR arose out of one property transaction that went bad. In 2005, Applicant lived in an apartment building that he enjoyed. In 2006, he learned that the apartment complex was being converted into to condominiums and he decided to purchased a unit in the first phase of the conversion. By June 2006, Applicant's purchase was completed. He purchased a condominium in the complex for \$325,000, with a down payment of \$30,000. The loan was an adjustable rate mortgage that was set for five years, before it would adjust. Shortly after purchasing the condo, Applicant was notified that Builder A, responsible for developing the condos, was foreclosed upon by Bank A, and were no longer selling the

properties. By this time, 50 condominiums had already been converted and sold and the Homeowners Association (HOA) was in full operation. There was hope that Bank A would find another buyer (developer) to finish the conversion process for the remaining 233 units in the complex. Applicant continued to make his regular mortgage payments according to the mortgage loan agreement. By 2007, Bank A had determined that the complex would stay as apartments and started advertising them for rent. Applicant was urged to short sale his condo back to the bank but refused. Renters started moving in and assuming the remaining 230 properties and the community significantly changed. The crime rate increased. Applicant's vehicle was broken into on three separate occasions. After about two years of making both his mortgage and HOA payments in a timely fashion, Applicant stopped making his HOA payments since he was not receiving the services that he had bargained for. As a result, he was sued in small claims court for the damages and lost. A judgment was filed against the Applicant in April 2013 in the approximate amount of \$5,150 for back owed HOA dues. Applicant borrowed money from his savings account and sold some stock in order to pay off the debt in full. (Tr. p. 76.)

After purchasing the condominium, but before learning of the problems, Applicant used his line of credit on a credit card to purchase upgrades for the condo. He purchased new appliances for the kitchen and granite counter tops for the kitchen and bathrooms. He made payments on the debt until 2010, when he decided to leave the community. As a result, Applicant became indebted to a bank in the amount of \$22,884. Applicant initially contacted the creditor and was told that the debt was charged off. He was later told that they were willing to settle the debt for \$11,000. Applicant's Post-Hearing Exhibit B is a letter from the collection agency confirming that on March 4, 2014, Applicant set up a structured payment plan that he intends to follow until the debt is paid in full.

Applicant was also indebted to a Bank A in the amount of \$5,824 for a credit card used to purchase flooring for the Applicant's condo when his unit incurred damage from another unit. Applicant thought he would be reimbursed for the damage, but was not. When he contacted the creditor he was initially told that the debt was charged off. He testified that he was currently in negotiations with the bank concerning his debt. Applicant's Post-Hearing Exhibit A is a letter from the collection agency confirming that on March 4, 2014, Applicant set up a structured payment plan that he intends to follow until the debt is paid in full.

Applicant admitted that he was urged to short sale the property back to Bank A beginning in late 2007, but refused. He had made a significant financial investment in the property that he did not want to lose and so he tried to hold on as long as he could. When he finally realized that things would not improve, he stopped making payments on the mortgage for about eight months before it was foreclosed upon in April 2011. Applicant explained that he received a Form 1099 A and has handled the tax implications. (Applicant's Post-Hearing Exhibit C.) Applicant self-reported his property foreclosure to his company security officer. (Government Exhibit 3.)

A letter of recommendation from the Applicant's direct supervisor reveals that Applicant consistently exhibits a high level of integrity and high moral character on the job. He is considered to be an effective leader, who is respected by his subordinates, colleagues, program managers, and the general manager of the business unit. He is considered reliable and trustworthy. (Applicant's Exhibit B.)

A letter from a fellow coworker, and landlord of the Applicant, indicates that Applicant always pays his rent on time and in full every month. Applicant takes excellent care of the property, is professional at work and in their landlord/tenant relationship. Applicant is considered reliable and trustworthy. (Applicant's Exhibit A.)

A letter from the Applicant's company security officer indicates that Applicant demonstrates an exemplary work ethic, honesty, integrity, security consciousness, and has great respect for the protection and safety of his country and those that protect it. He is recommended for a security clearance. (Applicant's Exhibit A.)

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 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 became delinquently indebted through no fault of his own, after certain unfortunate circumstances occurred surrounding the purchase of his condominium. When an individual is entirely dependent upon the actions of others, in this case, the developer and the bank, there is certainly no way the Applicant could predict that the apartment conversion process would not be completed as scheduled, and that he would be stuck in the middle of this unlucky financial dilemma. Despite this situation, Applicant acted responsibly and reasonably under the circumstances. And, there is no evidence in the record to show that the Applicant strategically arranged this loan default for the purpose of improving his financial position.

This humbling, unpredictable, and unfortunate circumstance was an isolated incident that will not recur. Although Applicant's property was foreclosed upon, he really had no other viable option available to him. Since then he has set up structured payments plans regarding the other two delinquent debts and is scheduled to start making regular monthly payments toward the debts until they are resolved. Applicant understands that he must be extremely careful when making decisions about property purchases and must often anticipate or even prepare for the worst. He understands

that he must remain fiscally responsible if he is to hold a security clearance. Under the circumstances he had done the best he could. He has made a good-faith effort to resolve his past due indebtedness. He has not incurred any new debt that he cannot afford to pay. He has clearly demonstrated that he can properly handle his financial affairs. There is clear evidence of financial rehabilitation. However, in the event that he becomes excessively indebted again and cannot meet his financial obligations, his security clearance will be in immediate jeopardy. 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 his almost fifteen years of military service and the favorable letters of recommendation in his current job. 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 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.

Subpara. 1.c.: For the Applicant.
Subpara. 1.d.: 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