



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



In the matter of:

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) ISCR Case No. 14-06312
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Applicant for Security Clearance

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Skyler D. Samp, Attorney At Law

January 20, 2017

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing, (e-QIP) on October 1, 2013. (Government Exhibit 1.) On February 23, 2016, 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 April 1, 2016, and he requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. This case was assigned to this administrative judge on July 25, 2016. A notice of hearing was issued on August 12, 2016, scheduling the hearing for September 15, 2016. At the hearing the Government presented nine exhibits, referred to as Government Exhibits 1 through 9, which were admitted without objection. Applicant presented thirteen exhibits, referred to as Applicant's Exhibits A through M, which were admitted without objection.

He also testified on his own behalf. The record remained open until close of business on September 28, 2016, to allow Applicant to submit additional supporting documentation. Applicant submitted two Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits H and N, which were admitted without objection. The official transcript (Tr.) was received on September 26, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

Applicant is 62 years old and married with adult three children. He has a Master's degree. He holds the position of Principal Technical Support Engineer for a defense contractor. He 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 denied each of the allegations in the SOR set forth under this guideline. (See Applicant's Answer to SOR.) Credit reports of Applicant dated January 31, 2013; and March 11, 2015, reflect that Applicant was indebted to both of the tax authorities set forth in the SOR, in an amount totaling approximately \$50,000, and that he had filed bankruptcy in 2011, and discharged his debts in 2012. (Government Exhibits 5 and 6.) Applicant has worked for his current employer since August 1993 with excellent performance.

Applicant served in the United States Navy from July 1972 to March 1993, a total of twenty-two years. During his military career he received a number of awards and commendations for his outstanding service. (See Applicant's Response to SOR.) He retired as a Chief Warrant Officer in March 1993. Upon his retirement, he went directly to work for the defense contracting industry as a civilian. He has been employed with his employer for 21 years. Applicant has held a security clearance for about 42 years, with no security violations. Applicant is considered to be 20 percent disabled by the Department of Veterans Affairs and receives monthly disability benefits. (Applicant's Exhibits B and C, and Tr. p. 30.)

From 2006 to 2012, Applicant experienced a series of unexpected financial hardships that caused his excessive indebtedness. Prior to this period, Applicant had always paid his bills on time without difficulty. Applicant has always filed his income tax returns on time. Applicant stated that from 2006 to 2009, he and his wife went to the

casino a few times, and won a jackpot on two occasions. Applicant was subsequently notified by the IRS and the state of tax levies imposed for delinquent taxes owed. (Applicant's Exhibits G, H, I, J, and K.) Applicant owed the IRS the amount of \$35,877 for tax years 2007 and 2009. He owed the state for delinquent taxes in the amount of \$16,140 for tax years 2006 and 2007. Applicant had made a number of mistakes on his income tax filings. He had forgot to include his winnings as income. He also forgot to include his IRA distributions as income. This created some complicated tax issues that took some time to resolve. For several years, Applicant disputed the amount the IRS claimed he owed. Applicant also argues that his use of the wrong form, his health problems, and how to properly include his special needs/handicapped daughter on his taxes were all issues that delayed his ability to get the proper amendment filed. Applicant was instructed by the IRS to amend his returns by filing a 1040X form to include his winnings and IRA distributions as income, as they are subject to taxation. In October 2014, Applicant filed the required amended returns, the balance owed by the Applicant was properly calculated by the IRS, and completely satisfied by the Applicant. (Applicant's Exhibit D.) In regard to his state tax liability, Applicant had established a payment plan, and paid off any delinquent taxes he may have owed to the state. In fact, Applicant stated that he received a tax refund from both the federal government and the state for tax year 2015, indicating that no remaining balance was due. (See Applicant's Exhibits E and F.)

In 2006, Applicant's son was involved in a high-profile legal battle and needed money from the Applicant to pay for his legal representation. In addition, since Applicant's son was unable to provide a stable income for his family during the investigation and trial, Applicant also provided financial assistance to his son's family, to ensure that the needs of his grandchildren and daughter-in-law were met throughout the legal proceedings. The expense involved in paying for two households and funding his son's litigation put a tremendous strain on the Applicant's finances.

In 2007, Applicant received an additional unexpected bill by the private investigator that was not itemized in the amount of about \$16,000. Applicant believed that he had already paid the investigator as part of his attorney fees, and refused to pay it. Applicant was sued by the private investigator for the amount owed. The Judge found in favor of the private investigator and a wage garnishment of \$1,000 monthly was imposed on the Applicant.

By 2008, Applicant's financial obligations had fallen far behind. Applicant's mortgage interest rate increased without him realizing it, and late fees were applied that he was unaware of. His home was close to being foreclosed upon. By 2011, most of his creditors were demanding payment in full. Applicant consulted legal counsel who advised that he file for Bankruptcy protection. On February 22, 2011, Applicant initially filed for Chapter 13 in order to stop the foreclosure. Since the court found him eligible for Chapter 7, on May 14, 2012, the Chapter 13 was later converted to a Chapter 7 to deal with all of his unsecured debt. Applicant's debts were discharged in August 2012.

Applicant states that he now has no delinquent debt. He is current with all of his regular expenses, and he has more than enough money to handle his finances. He paid all of his back taxes and the tax levies have been removed. (Applicant's Exhibit H.) His 401(K) has been depleted to about \$3,000 but he has totally resolved his debt. He does not foresee a circumstance like this ever occurring again. (Tr. p. 47.)

Letters of recommendation from professional associates of the Applicant are highly favorable. (Applicant's Exhibit N.)

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 that 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 a 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 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 excessive financial indebtedness that 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 continued 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 had excessive financial indebtedness (Guideline F) and the totality of this evidence indicates 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. 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 of the SOR.

The evidence shows that from 2006 to 2012, Applicant encountered a series of unexpected financial hardships that resulted in his financial demise. His failure to amend his tax returns to include his winnings and IRA distributions; the unexpected litigation fees for his son's representation; the cost of financing his son's criminal defense and the support for his son's family as well as his own, and the mortgage interest rate increase and related late fees, almost resulting in foreclosure, were his major problems.

Life circumstances can present difficult situations that can be financially draining. Given these difficult circumstances, Applicant has acted reasonably and responsibly. Applicant contacted an attorney for help, who advised him to file for bankruptcy to avoid foreclosure, and to resolve his delinquent indebtedness. Although it took sometime, Applicant finally filed the amended 1040X and paid his Federal and state delinquent taxes. He no longer owes anything to either tax authority. In the future, Applicant must continue to file his income tax returns on time, including any amendments required, and pay his taxes accordingly. In the event that he fails to do so, his security clearance will again be in jeopardy. Considering all of the evidence, Applicant has introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

In regard to 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* are also applicable. 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. Applicant has either served on active duty in the military, or worked for a defense contractor, for 42 years. His record is impeccable. Until 2006, he had never had any problems paying his debts or filing his income tax returns. Furthermore, Applicant has always filed his income tax returns on time. He has learned from this experience that he must continue to be careful and responsible in handling his financial matters. He has made a good-faith effort to resolve his debts and has demonstrated honesty and trustworthiness.

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, a willingness to comply with rules and regulations, and/or other characteristics indicating that the person may properly safeguard classified information. A security clearance is a privilege, not a right. In order to meet the qualifications for access to classified information, it must be determined that the applicant is and has been sufficiently trustworthy on the job and in his everyday life to adequately protect the Government's national interest. Overall, based upon the seriousness of the conduct outlined here, this applicant has demonstrated that he is sufficiently trustworthy, and does meet the eligibility requirements for access to classified information. Accordingly, I find for Applicant under Guideline F (Financial Considerations).

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.

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