



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-02913

Appearances

For Government: Jeff A. Nagel, Department Counsel

For Applicant: Shirin Shokrollahi, Attorney At Law

The Edmunds Law Firm

July 21, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on March 20, 2014. (Government Exhibit 1.) On November 6, 2015, 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.

Applicant responded to the SOR in November 20, 2015, and he requested a hearing before a Defense Office of Hearings and Appeals administrative judge. This case was assigned to the undersigned Administrative Judge on March 15, 2016. A notice of hearing was issued on March 22, 2016, scheduling the hearing for April 28, 2016. The Government presented six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant presented sixteen exhibits, referred to as Applicant's Exhibits A through P, which were admitted without objection. The Applicant testified on his own behalf. The record remained open until

close of business on May 10, 2016, to allow the Applicant to submit additional supporting documentation. Applicant did not submit any additional documentation. The official transcript (Tr.) was received on May 5, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

The Applicant is 61 years old and divorced with three children. He has two Master's degrees. He is employed with a defense contractor as an Engineer and 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 denied each of the allegations set forth in the SOR under this guideline. Credit Reports of the Applicant dated April 2, 2014; February 17, 2015; February 8, 2016; and April 23, 2016, reflect that the Applicant was indebted to each of the creditors in an amount totaling in excess of \$16,000. (Government Exhibits 2, 3, 4, 5 and 6.) Applicant has worked for the defense department for about 27 years. He has held a security clearance for about 20 years and has never violated company policy or security rules or regulations.

Applicant married his wife in the early 80's, and went through a difficult divorce in 2005. Applicant claims that during his marriage, all of his bills were paid on time, he lived within his means, and he had good credit. When Applicant divorced in 2005, it is likely that his ex-wife illegally opened a number of accounts in his name and charged them up without his knowledge. Applicant was completely unaware that he had any delinquent debts. He testified that he became aware of his delinquent debts for the first time when he met with the investigator during his security clearance background investigation. Applicant's divorce was final in August 2005. (Tr. p. 52.)

Applicant hired counsel and started trying to find out how the debts were incurred. There is no one else besides his ex-wife that had his social security number, but when he contacted her about the matter, she refused to talk with him. According to his credit reports, the following delinquent debts were owing:

1.a. Applicant was indebted to a bank for an account placed for collection in the approximate amount of \$8,119. Applicant has no knowledge of the debt. He sent a letter of dispute to the creditor. (Applicant's Exhibit L, and Tr. p. 33.)

1.b., a delinquent credit card debt owed to a creditor for an account that was charged off in the approximate amount of \$5,601. Applicant has no knowledge of the debt. He contacted the creditor and settled the debt. (Applicant's Exhibit K, and Tr. p. 34.)

1.c., a delinquent debt owed to a creditor for an account placed for collection in the approximate amount of \$818. Applicant has no knowledge of the debt. He sent a letter of dispute to the creditor. (Applicant's Exhibit H, and Tr. p. 36.)

1.d., a delinquent debt owed to a creditor for an account placed for collection in the approximate amount of \$612. Applicant has no knowledge of the debt. He contacted the creditor and settled the debt. (Tr. p. 37.)

1.e., a delinquent credit card debt owed to a creditor for an account that was charged off in the approximate amount of \$561. Applicant has no knowledge of the debt. He contacted the creditor and settled the debt. (Applicant's Exhibit I, and Tr. p. 39.)

1.f., a delinquent debt owed to a creditor for a delinquent medical account placed for collection in the approximate amount of \$72. Applicant had no knowledge of the debt. He contacted the creditor and paid off the debt. (Applicant's Exhibit G, and Tr. pp. 40 - 41.)

Applicant's financial statement dated December 4, 2015, indicates that after paying his regular monthly expenses, his taxes and credit card debt, he has discretionary monies in the amount of \$2,000 at the end of the month. (Applicant's Exhibit E.) Applicant's most recent credit report shows a good credit rating, between 710-718. He completed a credit counseling class to show his commitment to financial responsibility. (Applicant's Exhibit F.)

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he has engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) dated March 20, 2014, and answered, "NO," to a series of questions concerning his finances. (Government Exhibit 1.) Section 26 asked, "In the past seven years, have you defaulted on any type of loan? . . . had bills or debts turned over to a collection agency? . . . has any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?" As stated, Applicant answered, "NO." This was a false answer. Applicant was indebted to each of the creditors listed in the SOR. Applicant credibly testified that he had no knowledge of any delinquent debts until he met with the investigator about his security clearance. He has always paid his debts on time during

his marriage, and was never delinquent on his payments to his creditors. (Tr. p.44.) He did not intend to lie to the Government or conceal any information. (Tr. p. 45.)

A letter of recommendation from the Applicant's supervisor indicates that Applicant is a senior in his field who shows dedication, an excellent work ethic, does a good job interacting with a large multi-organizational test team, and consistently shows integrity and leadership skills. He is recommended for a security clearance. (Applicant's Exhibit B.)

Applicant's performance appraisal for 2014 demonstrates that he "achieves expectations" on the job. (Applicant's Exhibit D.) His most recent performance appraisal for 2015 demonstrates that he "consistently exceeds expectations." (Applicant's Exhibit P.)

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.(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

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;

20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

20. (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Conditions that could raise a security concern:

None.

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 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 . . . 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 dishonesty and/or financial irresponsibility 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 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.

The Government has met its initial burden of proving that the applicant has been financially irresponsible (Guideline F). The 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 until Applicant divorced his wife in 2005, he had great credit. In 2005, several accounts were opened in his name without his knowledge. He incurred a number of delinquent debts that he has either disputed or paid that were not his own. For obvious reasons, Applicant has not chosen to prosecute his wife or report her to the police. Instead he has worked to resolve the debts by himself and even completed a financial counseling class to show his dedication and seriousness to the matter. Under the circumstances he has shown good judgment and acted reasonably and responsibly. At this time, there is sufficient evidence of financial rehabilitation. Applicant has demonstrated that he can properly handle his financial affairs.

Applicant has met his burden of proving that he is worthy of a security clearance. 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. Mitigating Conditions 20.(a) *the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*; 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*; 20.(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, and 20.(e) *the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue* apply. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

In regard to his personal conduct, Applicant was truthful and candid with the Government on his security clearance application when he answered the questions concerning his finances. He did not know that he had any delinquent debts when he completed the security application. Once he learned of them, he contacted the creditors, informed them of his situation, and either disputed the debt or otherwise resolved it. I find that he answered the questions correctly and to the best of his knowledge and ability at the time. I find that he did not conceal this information from the Government on the application.

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, 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. It mitigates the negative effects of his financial indebtedness and his personal conduct, and the effects 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 Paragraphs 1 and 2 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.
Subpara. 1.e.	For the Applicant.
Subpara. 1.f.	For the Applicant.
Paragraph 2:	For the Applicant.
Subpara. 2.a.	For the Applicant.
Subpara. 2.b.	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

