



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-03202

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Anna Russell, Personal Representative

July 8, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) June 16, 2014. (Government Exhibit 1.) On November 18, 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 the (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 Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR on December 8, 2015, and requested an administrative 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 31, 2016, and the hearing was scheduled for April 28, 2016. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant presented eight exhibits, referred to as Applicant's Exhibits A through H, which were also admitted into evidence without objection. He also testified on his own

behalf. The record remained open until close of business on May 10, 2016, to allow the Applicant to submit additional documentation. Applicant submitted two Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A and B, which were admitted without objection. The official transcript (Tr.) was received on May 10, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

Applicant is 35 years old, and married with four children. He has naval military training, and a Bachelor's degree in Information Technology. Applicant is a Federal contractor working for a defense contractor as a Service Desk Agent. 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.

There are eight delinquent debts set forth in the SOR totaling approximately \$33,000. Applicant admitted each of the allegations under this guideline. Applicant's credit reports dated June 4, 2004; June 25, 2014; March 19, 2015; February 16, 2016; and April 23, 2016, which includes information from all three credit reporting agencies, indicates that Applicant was at one time indebted to each of the creditors listed in the SOR. (Government Exhibits 2, 3, 4, 5 and 6.)

Applicant served on active duty in the United States Navy from August 2000 to September 2012, for twelve years before he was honorably discharged. He held a security clearance without incident, and received a number of awards and commendations, including Navy Achievement Medals, Good Conduct Medals, and Sea Service Deployment Awards, among others. (Tr. p. 58.) During his military career, he paid his bills on time and lived within his means. In October 2012, the enlisted retention board broke contracts with about 3,300 mid-career sailors for the purpose of military downsizing. Through no fault of his own, Applicant was one of the Sailors who was abruptly discharged from the Navy. He left the Navy in October 2012, and his financial problems began.

Applicant immediately contacted each of his creditors and explained to them what had happened. A number of debts became delinquent, including those listed in the SOR. In September 2013, he was hired by his current employer as a Service Desk Agent. In October 2014, he was promoted to his current position of Systems

Administrator. Applicant testified that it took him almost two years working diligently to get his delinquent debts resolved.

1.a., a mortgage debt for an account that was 120 days overdue in the amount of \$24,595 with an outstanding balance of \$349,822. Applicant arranged with the lender to make half of his mortgage payments during his financial hardship period from 2012 to 2014. He started making full mortgage payments in 2014 that continue to the present. He is current and in good standing with the lender. (Applicant's Exhibit H.) Applicant's credit report dated 2014 and 2015, erroneously listed a double mortgage. The error reported on Applicant's credit report has been addressed. (Applicant's Exhibit D.)

1.b., a delinquent debt owed to a department store for a charged-off account in the amount of \$683. Applicant has been paying them \$56 on a monthly basis and currently owes a total of about \$130. He plans to continue making payments until the debt is paid in full. (Tr. p. 38.)

1.c., a delinquent debt owed on a military credit card for an account that was charged off in the amount of \$7,086. The bill was initially paid through Applicant's garnishment of Applicant's taxes. When Applicant started working he asked them to garnish his wages until the debt was paid in full. The debt has been paid in full. (Tr.p. 40, and Applicant's Exhibit E.)

1.d., a delinquent debt owed to a creditor for a collection account in the amount of \$115. This medical bill was paid by TRICARE. The debt has been paid in full. (Tr. p. 42.)

1.e., a delinquent debt owed to a creditor for a collection account in the amount of \$314. This debt was for penalties related to Applicant's truck payment that he paid in full and was given the title. (Tr. p. 48.)

1.f., a delinquent debt owed to a creditor for a collection account in the amount of \$228. This was a parking ticket paid through garnishment of Applicant's state tax refund. (Tr. p. 47.)

1.g., a delinquent debt owed to a creditor for a collection account in the amount of \$22. This was a penalty for not paying the parking ticket and speeding ticket, paid through garnishment of Applicant's state tax refund. (Tr. p. 47.)

1.h., a delinquent debt owed to a creditor for a collection account in the amount of \$546. This speeding ticket was paid through garnishment of Applicant's state tax refund. (Tr. p. 47, and Applicant's Exhibits F and G.)

Applicant's financial statement indicates that his current monthly gross income is \$5,600. His wife's gross income is \$3,750. He receives disability benefits in the amount of \$1,600 monthly. (Tr. p. 31.) Together they earn approximately \$105,000

annually. (Applicant's Exhibits A, B, and C.) After paying their regular monthly expenses of \$4,580, they have \$1,020 left in discretionary income.

Applicant's performance evaluation for the period from January 2015 through December 2015, indicates that he "met expectations" overall. (Applicant's Post-Hearing Exhibit A.)

Letters of recommendation from the Applicant's operations manager and his program manager, who is his direct supervisor, indicate that Applicant is knowledgeable, honest, hard-working, punctual, polite, and simply an overall exemplary employee. He is a person with high morals who does an excellent job and has nothing but glowing reports from the government customers for his professional performance. (Applicant's Post-Hearing Exhibit B.)

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, 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 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 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 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 was a career Sailor, in good standing, when in 2012, he was abruptly discharged due to military downsizing. He was not employed until September 2013. During his period of unemployment from September 2012 to September 2013, many of his debts became delinquent. Since September 2013, he has worked hard to resolve his debts. All of his delinquent debts, except one, have been paid in full or otherwise resolved. His only outstanding debt is owed to a department store for about \$130, and he is making regular monthly payments of \$56 to resolve it.

Under the particular circumstances of this case, Applicant has met his burden of proving that he is worthy of a security clearance. He has a concrete understanding of his financial responsibilities and has sufficiently addressed his delinquent debts in the SOR. Thus, it can be said that he has made a good-faith effort to resolve his past-due indebtedness. He has shown that he is or has been reasonably, responsibly, or prudently addressing his financial situation. Thus, Applicant has demonstrated that he can properly handle his financial affairs. He must continue to completely resolve his delinquent indebtedness. He must continue to demonstrate a history and pattern of financial responsibility, including the fact he has not acquired any new debt that he is unable to pay. 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, in this case, Mitigation 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 debt* are also applicable. Applicant has acted reasonably and responsibly, and he has made a good-faith effort to satisfy his delinquent debts. In fact, he has shown that he is financially responsible. 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, 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 does mitigate the negative effects of his history of 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 the applicant on the allegations in the SOR, as required by Paragraph 1.25 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.
Subpara.	1.f.	For Applicant.
Subpara.	1.g.	For Applicant.
Subpara.	1.h.	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