



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



In the matter of:)
)
) ISCR Case No. 15-03734
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Ryan C. Nerney, Attorney At Law, The Edmunds Law Firm

October 19, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on March 17, 2014. (Government Exhibit 1.) On December 15, 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 February 6, 2016, and he requested a hearing before a Defense Office of Hearings and Appeals Administrative Judge. This case was assigned to this Administrative Judge on April 4, 2016. A notice of hearing was issued on April 15, 2016, scheduling the hearing for June 2, 2016. At the hearing the Government presented five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. The Applicant presented fifteen exhibits, referred to as Applicant's Exhibits A through O, which were admitted without objection. He testified on his own behalf and called one additional witness. The record remained

open until close of business on June 26, 2016, to submit additional documentation. Applicant submitted two additional exhibits, referred to as Applicant's Post-Hearing Exhibits P and Q, which were admitted without objection. The official transcript (Tr.) was received on June 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 51 years old, and married with two adult step-children. He has a high school diploma and some college. He is employed as a Systems 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.

There are three delinquent debts, totaling approximately \$50,000, set forth in the SOR. Applicant denied each of the allegations with explanations under this guideline. (Applicant's Answer to SOR.) Applicant's credit reports dated May 30, 2014; April 2, 2014; December 10, 2015; and June 1, 2016, which includes information from all three creditor reporting agencies, reflect that Applicant was at one time indebted to each of the creditors listed in the SOR. (Government Exhibits 2, 3, 4 and 5.)

Applicant has worked for his current employer for the past twenty years. Over the years, the company has transitioned in name only from one defense contractor to another, but the employees have not changed. Applicant has been married since August 2001. He is the sole income provider for the family.

Applicant testified that at some point his wife became mentally and emotionally ill, going through deep depression, along with other symptoms causing her to lose control of her life to the point that she turned to shopping therapy. She used credit cards, spending excessive amounts of money to purchase items on the television jewelry/shopping channel. Her illness was so debilitating that she was unable to drive, unable to communicate with friends, and she having cognitive difficulties understanding things. She was formally diagnosed with acute fibromyalgia, Parkinsons and Bi-polar affective disorder. In August 2015, she was hospitalized for a psychotic episode, described as "danger to herself and grave disability." (Applicant's Post-Hearing Exhibit Q.) She still suffers from the medical conditions, but she is now stabilized. Applicant has taken away her access to credit cards and torn them up. They no longer have any credit cards and do not plan to have any in the future.

As a result of his wife's excessive spending, Applicant became indebted to a bank for a delinquent credit card that was placed for collection in the approximate amount of \$32,358. (Allegation 1.a.) Applicant has been in contact with the creditor every two weeks or so and attempting to work out a payment plan or settlement of the account. (Tr. p. 35.) The creditor has indicated that the account is under review. (Applicant's Exhibit I.) After the hearing, Applicant contacted the creditor and was told that they will not pursue collection action against the account, and they have now closed the account. Applicant is currently awaiting a letter from the creditor to verify this decision. Applicant also indicates that he will be receiving an IRS Form 1099-C at the end of 2016. He states that he will satisfy the tax liability incurred through his 2016 state and federal income tax returns. (Applicant's Post-Hearing Exhibit P.)

A delinquent debt, which is the Applicant's second mortgage on his house, is in the amount of \$16,007. This was a loan that Applicant took out in 2005 to pay down the credit cards that became delinquent in 2014, when the Applicant's wife went through another acute phase of her illness. (Allegation 1.b.) Applicant had to take a family medical leave of absence from work. He filed for unemployment and used his vacation time to try to make up the difference in his loss of income but it was not enough. During those three months he lost about 65% of his income. He fell behind on his bills, including his first and second mortgage. Upon returning to work, he was able to restructure the first mortgage loan, and set up a payment plan that he is following regarding the second mortgage. Applicant currently pays \$1,266.66 on the first mortgage and \$1,778 on the second mortgage. He anticipates being caught up with his both mortgages in about 13 months. He has been following the program now for the last five months and plans to continue until he is current.

A delinquent credit card debt owed to a bank in the amount of \$1,895 was opened in late 1990's. Applicant fell behind on the debt in 2010. In late January 2016, he paid the debt off in full. (Allegation 1.c., and Applicant's Exhibit J.)

Applicant explained that since 2011 he has been working hard to resolve his indebtedness. He believes that he has resolved a total of about \$100,000 in debt. Credit card debt of about \$50,000, and mortgage-related matters totaling another \$50,000. He admits that there were other delinquent debts that he paid that were not listed in the SOR. (Tr. p. 50.) Applicant's personal financial statement indicates that his current annual salary is \$127,000. He has about \$180,000 in his retirement account. (Applicant's Exhibit H.) He has been pulling money out of his 401(k) to pay off the credit cards, and is handling it without penalties or difficulty. Now, if a financial emergency arose again, he has sufficient monies available to resolve it.

Applicant's wife is in counseling at the church and has established some on line friends. She communicates regularly and no longer feels isolated. She is healing. (Tr. P. 51.) Applicant also had a credit monitoring system that will alert him if someone uses his credit. He and his wife have taken on-line financial counseling and understand the mistakes of the past. (Applicant's Exhibit F.)

A retired co-worker and friend, who has known Applicant for twenty years, and has worked along side of him on five or six projects over the years, testified that Applicant is strong, dedicated and focused. Applicant is well respected and highly recommended for a security clearance. (Tr. pp. 22-28.)

Letters of recommendation submitted by coworkers, professional associates, and friends of the Applicant, attest to his trustworthiness, loyalty, and dependable nature. He is described as a multi-talented engineer, who is highly motivated and dedicated to his work. He has a strong work ethic, strives for technical perfection and is comfortable working alone or with a team. He is a man of the highest integrity with deep seated well grounded values. He is highly recommended for a security clearance. (Applicant's Exhibit A.)

Performance evaluations of the Applicant for 2013 and 2014 reflect that he consistently "achieves expectations" in every category. (Applicant's Exhibit E.)

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.(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, and

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 presented shows that Applicant's wife's illnesses are to blame for Applicant's financial demise. Over the past few years, Applicant has worked hard to resolve this indebtedness, and has prevented it from happening again. He has been in contact with the creditors, worked out a payment plan, or otherwise resolved the debts. He has gotten rid of the credit cards, and placed a credit alert on his account, to inform him if his credit is ever used. He has sought out financial counseling for he and his wife. But, most importantly, he has shown dedication to his wife and family and resilience in handling difficult situations, while consistently using good judgment to arrive at a solution.

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 he has resolved the issues in question. 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 the issues in this case. 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.(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*; and 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. Applicant has for the most part resolved the indebtedness. 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 E3.1.25 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.

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