



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-03992

Appearances

For Government: Aubrey De Angelis, Department Counsel

For Applicant: *Pro se*

July 21, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on June 2, 2014. (Government Exhibit 1.) On December 14, 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 Department of Defense (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 on February 16, 2015, and he requested an administrative hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. This case was assigned to the undersigned Administrative Judge on April 4, 2016. A notice of hearing was issued on April 18, 2016, and the hearing was scheduled for June 1, 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 twelve exhibits at the hearing, referred to as Applicant's Exhibits A through L. He also testified on his own behalf. The record remained open following the hearing until June 15, 2016, to allow the Applicant to

submit additional documentation. The Applicant submitted one Post-Hearing Exhibit, consisting of four enclosures which was admitted into evidence without objection, and are referred to as Applicant's Post-Hearing Exhibit A, with enclosures 1 through 4. The official transcript (Tr.) was received on June 7, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

Applicant is 48 years old and married with children. He has a high school diploma and two and a half years of college. He holds the position of Program 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.

Applicant admitted each of the allegations set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated May 11, 2004; June 12, 2014; March 18, 2015; and March 28, 2015, reflect that at one time Applicant was indebted to the creditors set forth in the SOR for an amount totaling in excess of \$100,000. (Government Exhibits 2, 3, 4, 5.)

Applicant served in the United States Marine Corps from 1986 until 2006, when he was honorably discharged. In 2003, as an E-7, he and his wife purchased their first house with an adjustable rate mortgage, starting off at a 3.47 percent interest rate. In 2008, the loan adjusted to 8.25 percent, and the payments became excessive. Applicant continued trying to make the payments while attempting to refinance the loan, but was constantly given the run-a-round by the bank. By this time, the value of his house had significantly declined. The area was deteriorating as other residents in the neighborhood were walking away from their properties and there was no upkeep. Applicant conferred with a real estate professional who advised him to short sale the property. With this in mind, Applicant had several potential buyers for the property, but they were rejected by the bank. The house payment had ballooned so high that it was beyond what buyers would pay for the area. Applicant stopped making his house payments in June 2009. He continued to make payments on the line of credit account up until the foreclosure when he stopped. (Tr. p. 40.)

In 2010, Applicant's house was foreclosed upon and sold. Applicant became indebted to the lender for the second loan on the property, an equity line of credit in

the approximate amount of \$99,986. Applicant had hoped to use the money from the line of credit on a mobile maintenance repair business that never really materialized. Applicant provided a copy of the letter from the lender dated October 8, 2016, showing that the equity line of credit was resolved. (Applicant's Exhibit A, and Applicant's Post-Hearing Exhibit A, enclosures 1, 2, 3, and 4.)

In 2011 or 2012, Applicant was notified of a class action lawsuit filed against his lender for bad loans that they sold to their customers. In September 2015, Applicant received a check for \$300 for damages from the attorney representing the lender in a class action lawsuit. The bank ultimately settled the matter out of court. Applicant also submitted a local newspaper article reporting the lawsuit and that Applicant's bank engaged in a "regular practice of reckless origination and underwriting" of mortgage loans intended to help first-time buyers. (Applicant's Exhibit L.)

A credit card account became delinquent and was charged off in the approximate amount of \$2,932. Applicant explained that in 2011, he started a hover craft rental business. He used his credit card to purchase different components and to conduct research necessary in developing a hover craft. Over time, Applicant's business did not prove successful, and he became delinquent on his credit cards. Applicant states that last year he set up a payment arrangement with the creditor and since then has been paying on the account each month according to the agreement. Applicant states that he has settled this account in full. (Tr. p. 34, and Applicant's Exhibit C.) Applicant had a second credit card account with the same creditor that was not alleged in the SOR. This account was also paid in full. (Applicant's Exhibit B.

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 June 2, 2104. Section 26 asked, "In the past seven years, have you had any possession or property voluntarily or involuntarily repossessed or foreclosed?; . . . had any bills or debt turned over to a collection agency?; . . . had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?" The Applicant answered, "NO," to the question. (Government Exhibit 1.) This was a false response. At the time, Applicant believed all of his bills were being paid, however, he did not list his foreclosure. He stated that he consulted with his company's security department about the foreclosure, and was told not to list it in response to Question 26. He did, however, disclose it on another government form SF86(c) that he was required to complete relating to his clearance dated October 25, 2013. (Tr. pp. 44, 47 and Applicant's Exhibit D.)

Performance evaluations of the Applicant for the years 2008 through 2015 reflect that he has always either "met requirements" or "exceeded requirements." (Applicant's Exhibit K.)

Applicant current salary is approximately \$109,000 annually. He also receives about \$22,000 in military retirement benefits and \$1,800 in disability benefits annually. (Tr. p. 76.) After paying off their credit cards and their regular monthly expenses, he and his wife have between \$500 and \$600 dollars left at the end of the month. (Tr. p. 83 and Applicant's Post-Hearing 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 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.

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;
- 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 adjudication 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 . . . 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, and/or dishonesty, 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), and that he appears to have been dishonest on his security clearance application (Guideline E.) 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 as a first-time home buyer, Applicant was taken advantage of by the lender who gave him a high risk mortgage without his knowledge. The lender was ultimately accused by the Federal Government in a class action lawsuit of engaging in a practice of reckless origination and loan underwriting. Since Applicant was unable to keep up with the interest adjustments and balloon payment, his house was foreclosed upon by the lender. Theoretically, he was made whole with the \$300

check he received for damages. His second loan on the house, a line of credit, was also forgiven. Because he was involved in trying to start a business that proved not to be successful, he fell behind on his credit cards. For the past year, Applicant has been diligently working to repay his creditors and improve his credit rating. Each of the debts set forth in the SOR have been completely resolved.

Under the circumstances, Applicant is and has been making a good-faith effort to resolve his debts. He understands that he must remain fiscally responsible if he is to hold a security clearance. He has not incurred any new debt that he cannot afford to pay, and he is working to resolve his delinquent debts. There is clear evidence of financial rehabilitation. However, in the event that he cannot meet his financial obligations, or if he does not completely resolve his current outstanding debt, his security clearance will be immediately in jeopardy. 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).

In regard to his personal conduct, I find that he did not intentionally conceal his delinquent debts from the Government on his security clearance application when he answered the questions in Section 26. Applicant disclosed his foreclosure on October 25, 2013, on a government form that he filled out regarding his background finances as a part of his security clearance investigation. At the time he completed the e-QIP, he believed that he did not have any delinquent debts, as he had been trying hard to continue making payments to his creditors, even though he had financial hardship with the mortgage. He asked for advice from his company security office and was told not to put it down in response to question 26. I find that he was careless in completing the application, but that he did not deliberately attempt to conceal the information from the Government on the application. Accordingly, I find for the Applicant under Guideline E (Personal Conduct).

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, supports a whole-person assessment of good judgment, 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 favorable letters of recommendation and his dedicated military service. Overall, 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 E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.
Subparas. 1.a.: through 1.e.: For the Applicant.

Paragraph 2: For the Applicant.
Subpara. 2.a.: 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