



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



In the matter of:)
)
) ISCR Case No. 15-04002
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: James W. Green, Attorney At Law

February 3, 2017

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing, (e-QIP) on August 21, 2014. (Government Exhibit 1.) On January 17, 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 March 24, 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 June 20, 2016. A notice of hearing was issued on August 14, 2016, scheduling the hearing for September 14, 2016. At the hearing the Government presented eight exhibits, referred to as Government Exhibits 1 through 8, which were admitted without objection. The Applicant presented five exhibits, referred to as Applicant's Exhibits A through E, which were admitted without objection. He called

four witnesses and he testified on his own behalf. The record remained open until close of business on September 28, 2016, to allow the Applicant to submit additional supporting documentation. Applicant submitted four Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits F through I, 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

The Applicant is 36 years old and is married with one child. He has a high school diploma and a Bachelor's degree. He holds the position of Consultant 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 the allegations set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated August 28, 2014; November 10, 2014; April 16, 2015; and June 6, 2016, reflect that Applicant was at one time indebted to each of the creditors set forth in the SOR. (See Government Exhibits 2, 3, 4, and 5.) Applicant was hired by his current employer in September 2, 2014. He has never held a security clearance before.

Applicant worked for his father's roofing business from 2000 to 2009. In the beginning, the business experienced significant growth and expansion. At one point, Applicant was earning as much as \$100,000 annually. During that time, Applicant acquired personal lines of credit, credit cards, two vehicles, and a house for the family. As time passed, the housing market took a drastic downturn that caused the roofing business to significantly decline. Applicant's income dropped to about \$50,000 annually. Applicant saw quickly that he could not afford to maintain his earlier lifestyle, and he returned the vehicles to the lien holders, short sold his house, and moved into a less expensive place. The company became insolvent, and Applicant was unemployed in 2009.

1.a. Since 2009, Applicant has made an effort to manage his debts as best he could with limited income. He sought legal advice and was told to file for Bankruptcy. He filed for Chapter 13 in March 2009. (Government Exhibit 6.) This bankruptcy was dismissed when Applicant learned that a Chapter 7 would be more advantageous. He

filed for Chapter 7 on April 15, 2016. Most of the delinquent debts set forth in the SOR were included in the bankruptcy. (Government Exhibit 7.) A discharge was granted on July 19, 2016. (Applicant's Exhibit G.)

1.b. A delinquent auto loan account was charged off in the approximate amount of \$13,932. Applicant asked the lien holder to pick up the truck as he could no longer afford it. It was sold at auction and the remaining balance is the deficiency that Applicant owed. Applicant filed for Chapter 7 bankruptcy on April 15, 2016, and this debt was discharged. (Tr. p. 43.)

1.c. A delinquent credit card account was placed for collection in the amount of \$13,857. Applicant disputes the debt and it has not been validated as a legitimate debt. The Government's credit reports do not list it. (Tr. p. 45.) Accordingly, this debt is found in favor of the Applicant.

1.d. A delinquent student loan account was charged off in the approximate amount of \$12,419. Applicant states that he has consolidated all of his student loans and currently owes approximately \$34,700. He has filed for a deferment status based upon financial hardship for the past two years. He plans to start making payments in February 2017, and will continue to do so until the debt is paid in full. (Applicant's Exhibit B.)

1.e. A delinquent credit card account was placed for collection in the approximate amount of \$12,000. The credit card was partially used for business purposes and the debt was discharged in the Chapter 7 bankruptcy filed on April 15, 2016. (Tr. p. 49 and Applicant's Exhibit A.)

1.f. A delinquent account was placed for collection in the approximate amount of \$6,779. This was an equipment lease for the business that failed. The debt was discharged in the Chapter 7 bankruptcy filed on April 15, 2016. (Tr. p. 50 and Applicant's Exhibit A.)

1.g. A delinquent auto loan account was charged off in the approximate amount of \$4,891. This was a work truck that one of the employees drove. Applicant asked the lien holder to pick it up, as he could no longer afford it. The debt was discharged in the Chapter 7 bankruptcy filed on April 15, 2016. (Applicant's Exhibit A.)

1.h. A delinquent credit card account was placed for collection in the approximate amount of \$2,470. This debt was discharged in the Chapter 7 bankruptcy filed on April 15, 2016. (Applicant's Exhibit A.)

1.i., 1.j. and 1.k. Delinquent Federal taxes were owed in the amount of \$26,397 for tax year 2009; \$12,373 for tax year 2010; and \$1,730 for tax year 2011. Applicant explained that his grandmother was a stakeholder in an investment and he was one of the beneficiaries. Distributions were made, and Applicant used the money for living expenses instead of paying his taxes. Applicant states that he used the money for the

taxes to help his grandmother, who was ill, and his family. (Tr. p. 53.) Applicant claims the taxes were discharged in this Chapter 7 bankruptcy filed on April 15, 2016. (Tr. pp. 55-56 and Applicant's Post-Hearing Exhibits F and G.)

Applicant has set up a monthly financial budget to assist him in keeping track of his expenses. After paying all of his regular monthly expenses, at the end of the month, and student loans, (when they are released from forbearance) Applicant still has in excess of \$1,000 left in discretionary monies. (Applicant's Exhibits C and Post-Hearing Exhibit I.)

Applicant received an achievement citation for superior performance, and a favorable job performance evaluation for the review period from October 1, 2015 through September 30, 2016. (Applicant's Exhibit E.) In addition, Applicant recently received a letter from his employer regarding a promotion and salary increase. (Applicant's Exhibit H.)

Four witnesses who work with the Applicant in some capacity, including his direct supervisor, who all hold security clearances, testified that the Applicant has great character, is trustworthy, responsible, shows good judgment, and is honest. Applicant's work performance is described as excellent. Applicant is highly recommended for a security clearance. (Tr. pp. 75-87.)

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 which 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 Applicant was working for his father’s business and doing well for a time, and earning a good living. When the market changed, his income dropped, and he adjusted his lifestyle accordingly. Under the circumstances, to best resolve his debts, he filed for bankruptcy to discharge them. He has only one remaining debt, which are his student loans, and they are currently in forbearance. He is planning to start the payment plan to resolve them in February, when his deferment expires. In the event that any further taxes are owed, Applicant must immediately set up a payment plan and make monthly systematic payments to resolve it, and then adjust his tax withholding accordingly to avoid any future problems of that sort.

Applicant has submitted documentary evidence to support the fact that he is resolving the delinquent debts listed in the SOR. This compelling documentary evidence shows that he has acted reasonably and responsibly. He has shown good-faith by resolving his financial indebtedness. Based upon this documentation, there is sufficient evidence of financial rehabilitation. 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 shown good judgment, reliability and trustworthiness. He clearly understands the meaning of living within his means, and spending only what he can afford.

Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed 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 now 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.
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.
Subpara. 1.i.: For Applicant.
Subpara. 1.j.: For Applicant.
Subpara. 1.k.: 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.

Darlene Lokey Anderson
Administrative Judge