



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-04200

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: *Pro se*

August 5, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing, (e-QIP) on August 1, 2013. (Government Exhibit 1.) On December 4, 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) detailing the security concerns under Guideline F for Applicant. The SOR sets 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 January 7, 2016, 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 April 11, 2016. A notice of hearing was issued on April 18, 2016, and the hearing was scheduled for June 3, 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 five exhibits, referred to as Applicant's Exhibits A through E which were also

admitted into evidence without objection. He also testified on his own behalf. The record remained open until close of business on June 17, 2016, to allow the Applicant to submit additional documentation. Applicant submitted no Post-Hearing Exhibits. The official transcript (Tr.) was received on June 13, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

Applicant is 39 years old and is divorced with five children. He has a Master's degree in Information Assurance. He holds the position of Cyber Team Member 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.

Applicant denies allegation 1.a., and admits allegation 1.b, of the SOR set forth under this guideline. (See Applicant's Answer to SOR.) Credit reports of Applicant dated August 31, 2013; April 10, 2015; February 24, 2016; and June 2, 2016, reflect that Applicant was indebted to each of the creditors set forth in the SOR, in an amount totaling approximately \$500,000. (Government Exhibits 3, 4, 5 and 6.)

Applicant has a history of financial responsibility up until May 2012. Applicant is recently divorced. He has worked for the defense industry since 2003 and has held a security clearance since then. He has never had a security violation.

In 2006, Applicant purchased a house for he and his wife and their five children. To take care of their children, his wife, who is trained and educated as a registered nurse, is now a homemaker and stay at home mother. They obtained a 30 year fixed mortgage loan when they purchased the house. The mortgage payment was about \$3,400. Applicant was comfortably able to make the house payments. He also refinanced the second mortgage to lower the payments. In May 2012, Applicant and his wife had twins, and the Applicant's 70 to 80 mile commute to work became too stressful on the family. Applicant contacted a real estate agent to put the house up for sale, with the intent of moving closer to his work. (Tr. p. 37.) Applicant had the money to continue making the mortgage payments on the house, but was advised by his real estate agent and his attorney to stop doing so. At the time, Applicant owed a total of about \$500,000 on both mortgages. The lenders negotiated about a short sale for over a year. The short sale was not approved and on April 24, 2013, the house was foreclosed upon.

(Applicant's Exhibits D and E.) Applicant was indebted to a lender for an account that was charged off in the amount of \$363,948. (Applicant's Exhibit A.) This debt is no longer reflected as owing on his credit report. (Applicant's Exhibit B.) He was also indebted to a lender for a second loan on the house that was charged off in the amount of approximately \$120,980. Applicant testified that the property was sold at auction for about \$380,000, which was more than the Applicant owed on his first loan. Applicant further stated that in addition, the lender requested a few thousand more dollars from the Applicant, and he paid it. In regard to the second loan on the house, Applicant contacted the lender after the foreclosure and was not given any information as to what he owed or not. In December 2015, this matter resurfaced through the process of Applicant's security clearance background investigation, and Applicant once again contacted the lender to get the matter resolved. He is currently working toward an agreeable settlement amount that he plans to pay with his retirement funds. (Applicant's Exhibit C.)

Applicant testified that he currently earns \$130,000 annually. He brings home \$7,600 monthly. He rents a room for \$400 that include utilities. He pays \$5,000 monthly in child support. His car payments are \$550 monthly. Applicant has reduced his other expenses. He has \$4,000 in his savings account and \$40,000 in his retirement account. He has been in regular contact with the lender on the second mortgage and plans to use his retirement account to pay the second loan on the house once they arrive at an agreement settlement amount. (Tr. p. 51) He has no other delinquent accounts.

Letters of recommendation from professional colleagues and coworkers indicate that he is intelligent, a creative thinker, a great leader, a hard worker, dependable, a good communicator, very courteous, and well respected. He is recommended for a security clearance. (Applicant's Post-Hearing 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;

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.

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 that 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 a 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 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 has a history of financial responsibility. It was in May 2012, after his twins were born, that the long commute to work became too stressful on his family. He tried to sell the house to move closer to work. Unable to sell the house, his real estate agent and attorney advised him to stop making payments in order to be considered for a short sale. The short sale never materialized, but the house was foreclosed upon and sold at auction, for more than what Applicant owed on the loan. The sale of the house relieved Applicant's obligation under the first mortgage. Applicant is currently working out a settlement with the lender on the second mortgage. Applicant is also recently divorced. He provides all of the financial support for his ex-wife and their five children in the amount of \$5,000 monthly. He rents a room for himself. It cannot be said that he is not responsible. In fact, he is very responsible.

Under the circumstances, Applicant has acted reasonably and responsibly and has shown good judgment. 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*; 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* 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 worked for the defense industry for thirteen years and has held a security clearance without incident. When his house was foreclosed upon, he reported it to his company. He also self-reported an incident when he committed a security violation, when no one else knew about it. (Tr. pp. 30-31.) He is of good moral character and honesty. He has made a good-faith effort to resolve his debts, and has demonstrated reliability and trustworthiness.

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, 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 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.

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