



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



In the matter of:)
)
) ISCR Case No. 15-04575
)
)
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 18, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on November 3, 2014. (Government Exhibit 1.) On December 11, 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 January 9, 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 seventeen exhibits, referred to as Applicant's Exhibits A through Q, which were admitted without objection. He called two witnesses and testified on his own behalf. 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 33 years old, and is married with two children. He has a Master's of Business degree in Project Management. He is employed for a defense contractor as a Program Modifications Manager. He is seeking to retain 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 is one delinquent mortgage account set forth in the SOR, totaling approximately \$202,745. Applicant denied the allegation under this guideline. Credit reports of the Applicant dated November 8, 2014; and April 16, 2015, which include information from all three credit reporting agencies, indicates that at one time he was indebted to the creditor listed in the SOR. (Government Exhibits 3 and 4.)

In March 2007, Applicant began working for his current employer. He has held a security clearance since then. In the summer of 2008, he purchased a primary residence not far from where he was born and raised. He purchased a townhouse in a newly converted townhouse community for \$215,000 with a 30-year fixed loan. Applicant testified that he was the second individual to purchase a unit in the 40 to 60 unit housing development. Applicant was told that when the complex was 75 to 80-percent owner occupied, the home owners association (HOA) would begin its job of properly up keeping and maintaining the complex. A property management firm was brought in to help, and in November 2008, Applicant and several other community members attempted to establish an HOA association. Applicant was elected President of the HOA. However, with the collapse of the housing market, the owner occupancy never reached the 75 percent threshold, and the HOA was never established. As time passed, the property was not selling and the owner started renting the units to the county for low-income housing. No money was being generated for maintenance and the area quickly declined. Applicant's backyard fence fell down, and there were robberies and shootings in and around the complex. Applicant came home from work one day to find a DEA Agent's car blocking his unit, as they had been raiding one of the units in the complex. (Tr. p. 42.)

In June 2012, Applicant learned that his wife was pregnant with their first child. Applicant did not feel that his home environment was a safe place to raise a child. He

made a careful and well-thought out decision about what to do. He could not rent his property for the amount owed on the mortgage, and the bank did not agree to a short sale. He consulted a real estate agent and an attorney about his situation. Applicant was advised to walk away from the property and allow it to be foreclosed upon. Applicant took the advise and made his last house payment on the property in October 2013. The house was foreclosed upon in March 2015. Applicant testified that he received an IRS Form 1099-C, a cancellation of debt with non-recourse against the Applicant. (Applicant's Exhibit Q.) Thus, the sale of his house in foreclosure covered the amount owed on the loan. Applicant's 2014 income tax return further shows no foreclosure tax penalty. (Applicant's Exhibit P.)

Applicant's financial history shows that he has always paid his bills on time. His most recent credit report shows that he has no delinquent debts. (Applicant's Exhibit N.) He lives frugally and responsibly. His financial statement and banking information show that he has about \$64,000 in his savings account, and \$210,000 in his retirement account. (Applicant's Exhibits L and M.) His credit score at the time of the foreclosure was 780. Although he had sufficient monies to pay the mortgage on the condo, upon the advise of his real estate agent and attorney he chose to let it go into foreclosure, knowing it would negatively effect his credit, because of the danger continuing to stay in the condo posed his family.

Two witnesses testified on behalf of the Applicant. They are both long-time friends of the Applicant. They know him to be a hard worker, mature, honest, reliable and trustworthy. One of them commented on Applicant's frugal nature, and his responsibility with his money. Applicant is highly respected and recommended for a security clearance. (Tr. pp. 26-36.)

Letters of recommendation from professional colleagues and friends of the Applicant attest to his reliability and trustworthiness. (Applicant's Exhibit A.)

Performance Evaluations of the Applicant for 2013 through 2015 reflect that he either meets or exceeds expectations in every category. He is described as an outstanding employee. (Applicant's Exhibit E.)

Applicant has received a number of awards, certificates, and commendations for his dedicated performance and valuable contributions on the job. He has also provided a list of accomplishments and recognitions he has received. (Applicant's Exhibit J and K.)

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;

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.

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 when Applicant purchased his home in 2008, he expected the housing development to be properly maintained by the HOA. This never transpired. Instead, the owner of the development rented most of the units to the county for low-income housing. The value of the property declined in value and over time became a dangerous place for his family. Applicant's decision to walk away from the property was not financially motivated. The property was underwater, but he had the money to pay the mortgage. After consulting a real estate agent and an attorney, upon their recommendation, he chose to allow it to be foreclosed upon for the safety of his family, due to the increasing crime rate in the area, and because it lacked an HOA to maintain the property. Given the unusual circumstances in this situation, Applicant has demonstrated good judgment. But for this instance, Applicant has an unblemished history of financial responsibility. As evidenced by his credit reports, he has never backed out or failed to pay his financial obligations. Applicant received an IRS Form 1099-C, a cancellation of debt with non-recourse against the Applicant. In the unusual even that Applicant is required to pay anything in taxes, he is willing, and has the money to do so. Under ordinary circumstances, allowing your home to be foreclosed upon shows poor judgment, however in this case, Applicant demonstrated good judgment and reliability by moving his family out of a dangerous situation before it became more serious.

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. Thus, it can be said that he has made a good-faith effort to resolve his past-due indebtedness. He no longer owes the lender for the mortgage loan as evidenced by the IRS Form 1099-C. He has made reasonable and responsible decisions when addressing this financial situation. Thus, Applicant has demonstrated that he can properly handle his financial affairs. 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. Mitigating 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; 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. 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, 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.

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

