



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



In the matter of:)
)
) ISCR Case No. 15-05396
)
)
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 December 9, 2014. (Government Exhibit 1.) On March 25, 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 April 19, 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 seven exhibits, referred to as Government Exhibits 1 through 7, which were admitted without objection. The Applicant presented six exhibits, referred to as Applicant's Exhibits A through F, which were admitted without objection. He called

two 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 five Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits G through K, which were admitted without objection. The official transcript (Tr.) was received on September 22, 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 38 years old and is married with three children. He has a Bachelor's degree in Communications. He holds the position of Scheduler 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 December 23, 2014; February 13, 2015; May 11, 2016; and September 12, 2016, reflect that Applicant was at one time indebted to each of the creditors set forth in the SOR, which include a mortgage default, a Chapter 7 bankruptcy discharge, and Federal back taxes for multiple years in the amount of about \$36,000. (See Government Exhibits 2, 3, 4, and 7.) Applicant was hired by his current employer in December 2014. He has never held a security clearance before.

In 2001, Applicant went to work for his father's well-established roofing business, specializing in high-end custom roofs. From 2001 to 2005, the company was doing well while the economy was good. Applicant was earning between \$90,000 and \$100,000 annually. In 2006, Applicant purchased a house for about \$720,000 with an adjustable rate mortgage. It was about that time that the housing market took a drastic downturn. Applicant states that he did not realize the decrease in the housing market. (Tr. p. 78.) In 2006/2007, the construction business declined as did the roofing business, and so did the Applicant's father's company. This decline drastically affected the Applicant's pay which dropped to about \$50,000 annually. Trying to sustain the company became difficult, and in about 2009 the company was insolvent, Applicant was unemployed.

Unable to find work elsewhere, Applicant started his own construction company doing average residential roofs. His business struggled along until he closed it in 2011.

By this time, he had fallen deeply in debt. Applicant stated that there were stretches of time where he was not making any money. He stated that he collected unemployment for a brief time, and even worked small jobs as a handy man to help pay the bills. (Tr. pp. 33-34.)

As a result of the declining roofing business, Applicant lost the ability to support himself and his family. In 2009, his grandmother, who was a stakeholder in an investment matter, placed the Applicant as one of the beneficiaries. The company had a profit, and K-1's were distributed with a tax liability. Applicant used the money to provide for living expenses, and it did not go towards paying the taxes on the distribution. Applicant became indebted to the Federal government for delinquent taxes in the amount of \$36,289.55 for tax years 2009, 2010 and 2011. The company eventually dissolved. In March 2015 Applicant entered into a payment plan with the Internal Revenue Service (IRS) to resolve his back taxes for tax years 2009, 2010 and 2011. According to the plan, he is paying \$556 monthly for 60 months to pay off the debt. (Applicant's Exhibits A, B, C and D.)

Applicant acquired significant debt from his business, and his personal matters, and could not see a way out. In June 2011, he defaulted on his mortgage loan. He tried to get the mortgage modified, but was unsuccessful. He states that he was able to work with the bank to complete a short sale on the property. He received a Form 1099-C from the IRS and the reclaimed property is the collateral to satisfy the mortgage. (Applicant's Exhibit K.) He moved in with his in-laws, where he paid \$2,000 for rent for two years, and then into a rental that now costs him about \$2,600 monthly. In December 2011, he injured his leg at work which resulted in a lot of medical bills.

Applicant's income had declined so much, in order to re-establish himself financially, he decided to file for bankruptcy protection. In January 2012 Applicant filed for Chapter 7 personal bankruptcy. His debts in the approximate amount of \$316,000 were discharged in 2013. (Government Exhibits 5 and 6.) Applicant explained that a majority of the debt in his personal bankruptcy were personal liabilities from his father's business. (Applicant's Post-Hearing Exhibit G.)

In December 2014 Applicant started working for a defense contractor. He is now doing project management work that he enjoys. He is currently earning about \$70,000 annually. His wife is working part-time, and earning about \$15,000. (Tr. p. 72.) Applicant's monthly budget is tight, but he believes he is more financially stable. He now lives within his means. He has no savings account and no retirement account. He has \$2,500 in his checking account. He still owes back taxes that he is paying on a monthly basis, and will continue to do so until the debt is completely paid off.

Two witnesses testified on the Applicant's behalf. The corporate Vice President of Operations, the individual who hired the Applicant, and who holds a security clearance, testified that Applicant is a great employee, who is responsible and trustworthy. (Tr. pp. 96-99.) The Regional Director for the West Coast, who also holds a security clearance, testified that Applicant is a top performer, and their clients are

happy. Applicant is described as being honest, open, trustworthy, and responsible. Both individuals highly recommend him for a security clearance. Applicant received a Project Management Professional Award from his employer dated August 14, 2015. (Applicant's Exhibit E.) He also received an Achievement Award dated April 15, 2016. (Applicant's Exhibit F.)

Applicant has received credit counseling and has set up a personal monthly budget that he is following. (Applicant's Post-Hearing Exhibits I and J.)

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 has had a difficult time adjusting to the downturn in the housing market, which negatively effected his income, and his standard of living. Working at his father's roofing business when it was successful was not a problem. However, when the housing market turned, the roofing business drastically declined, Applicant's income dropped. Admittedly, he tried to keep his family accustomed to the same comforts and lifestyle with little change. Trying to stay in the expensive house, live in the same area, and maintain the same lifestyle took a significant toll on him, since he really could not afford it. Unfortunately, he was not able to keep it up. He was forced to file bankruptcy, and his home was foreclosed upon. Since then, he has learned a hard lesson. He now understands the importance of maintaining financial responsibility. He knows that he must never live beyond his means, and he must always pay his bills on time. He must never place himself in a situation where he could be a security risk to the Government.

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 repaying his financial obligations, and 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 is hard worker but still learning how to properly budget his money to be prepared for a rainy day. Even with family pressures to live in a certain area and send children to certain schools, it is imperative that he understand the importance of paying his bills on time and living within his means. Going forward, he must only spend what he can afford. If he does not, his security clearance will again be in immediate jeopardy.

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.

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