



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



In the matter of:)
)
) ISCR Case No. 15-06284
)
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Department Counsel
For Applicant: *Pro se*

December 2, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) October 29, 2014. (Government Exhibit 1.) On April 16, 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) 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 the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR on July 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 August 24, 2016. A notice of hearing was issued on August 30, 2016, scheduling the hearing for October 11, 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 four exhibits, referred to as Applicant's Exhibits A through D, which were admitted without objection. He also testified on his own behalf. The official transcript (Tr.) was received on October

19, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 58 years old, married and has four adult children. He has a Bachelor's of Science degree in Computer Information Systems. He is currently employed as a Principal Multi-Discipline Engineer with a defense contractor and 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.

There are three delinquent debts set forth in the SOR. 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 November 6, 2014; July 22, 2015; and August 15, 2016, which include all three credit reporting agencies, reflect that he is indebted to each of the creditors set forth in the SOR in an amount totaling in excess of \$125,000. (Government Exhibits 3, 4 and 5.)

Applicant has been working for his current employer for 38 years, and has held a security clearance for much of that time. His security clearance and his job are very important to him. He states that he acquired two patents, and he has made numerous valuable contributions to the defense industry.

Applicant has owned three properties. He purchased property A in October 1987. He purchased property B in July 2006, and property C in May 2009. Each time he purchased a property, it became his primary residence. The previously purchased property became a rental. Applicant admitted that he failed to pay IRS taxes for year 2009. In July 2012, two Federal tax liens were entered against him in the amount of \$79,781. In September 2012, a third Federal tax lien was entered against him in the amount of approximately \$19,215. (Government Exhibit 2.)

Applicant testified that in July 2006, when he purchased property B, he and his wife withdrew money from their 401K savings under the hardship exclusion to purchase their primary residence. This was a tax free withdrawal at the time. In May 2009, when they purchased property C, they did it again. This time Applicant withdrew \$100,000 from his 401k savings account under the hardship provision, and his wife withdrew \$50,000 from her 401K to purchase their primary residence. Unbeknownst to the Applicant, the IRS had changed the laws, and the hardship exclusion was no longer tax

free to purchase a primary residence. Sometime in 2011, Applicant learned that he owed the IRS in back taxes, fees, penalties, and interest that had accrued to about \$98,000. Applicant hired several attorneys to investigate the matter, and spent more money trying to avoid paying it, only to find out that the attorneys were all disreputable.

Due to the downturn in the real estate market in 2008, the value of Applicant's properties decreased, and he was unable to refinance his homes to obtain a better mortgage rate. Thus, he was unable to keep up with his payments on the mortgages. He contacted the lender on property B, and arranged to short sell the property. The house was sold and the lender accepted the sale price as full payment of Applicant's mortgage. (Government Exhibit 2.)

Applicant states that in total he owed the IRS approximately \$115,000 in delinquent tax debt. In an effort to resolve the delinquent taxes and remove the tax liens, Applicant tried to obtain a conventional loan, but was unable to get one. Instead, he obtained a hard money loan through a private investor for about \$90,000. He used the money to pay some of his back taxes and remove the IRS tax liens. Applicant's Exhibits A and B are IRS Notices of Federal Tax lien withdrawals related to the matter. Applicant explained that the hard money loan is a two year loan, which has a balloon payment at the end. Applicant states that in two years, he plans to refinance his home in order to make the balloon payment on the hard money loan. Applicant explained that he has about \$600,000 in equity in property C, but because he had a foreclosure that occurred within the past five years, he is unable to obtain a loan. He adds that he will also be able to access his 401k without penalties because he will then be 59 1/2 years old and will avoid penalties. Applicant continues to owe about \$24,000 to the IRS for tax years 2010 and 2011. (Tr. p. 36.)

In 2012, the bank foreclosed upon property A, which had a loan of \$599,999. Applicant had tried to have the mortgage refinanced, but was unsuccessful. His attorney advised him to stop making the house payments in order to qualify for a loan modification. However, in December 2012, the bank foreclosed on the house, and it sold for \$413,000 at auction. Applicant contends that the auction sale satisfied the debt he owed on the loan to the bank.

Applicant also became indebted to the bank for an equity line of credit on property A, totaling about \$10,950, with an outstanding balance of \$64,124. Applicant testified that he has not done anything about this debt as of yet. He is planning on disputing the debt, since he believes the loan was secured by property A. He has had no contact with the collection agency or the original creditor. The debt remains outstanding.

Applicant states that he is current on his mortgage for his primary residence, property C. He states that the economy has improved and he has built a large equity on his home. In March 2016, Applicant reported fraud or identity theft to the police. He explained that on February 22, 2016, he left his truck open to his vehicle and his back pack was stolen from the trunk. He explained that his personal information, as well as

his wife's and daughter's information were in his backpack. Applicant contents that applications for credit have been made in his name and in his family's name, but no money has been lost. As of March 15, 2016, Applicant reported that it was continuing to happen. Applicant stated that he needed the police report number for the credit bureaus. Applicant has placed a freeze on his credit accounts in order to monitor them.

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.

Condition 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.

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 and surrounding circumstances;
- 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 . . . 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 the Applicant has been financially irresponsible (Guideline F). 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 Applicant's real estate investments, his ignorance of the IRS laws, and the downturn in the real estate market caused him significant financial difficulties. Although one cannot predict a downturn in the real estate market, one must be fairly prepared to handle it, without disastrous consequences, if it occurs. Withdrawing large amounts of money from his 401K without understanding what penalties, if any, were involved has been one major problem. This snowballed and prevented Applicant from being able to pay his taxes. Then to further complicate matters, Applicant took out a hard money loan with a balloon payment due in two years. Instead of owing the IRS the \$90,000, he now owes the private investor about \$90,000. He also still owes the IRS about \$24,000 for tax years 2010 and 2011. In addition, he owes a lender for an equity line of credit about \$11,000. Instead of setting up a payment plan with the IRS, Applicant borrowed money to pay his debts. His shuffling of finances around from one creditor to another does not show good judgment. He has not established a pattern of paying back his debts over time, nor has he shown sound judgment or an ability to resolve his outstanding debt. He remains excessively indebted and in an unstable financial position.

Applicant's history of excessive indebtedness, without sufficient mitigation, demonstrates a pattern of unreliability. Applicant's financial situation is tight or he would not have sought out a loan to pay his debts. There is little to nothing in the record to show that he has made a good-faith effort to resolve his debts. Without more, Applicant has failed to establish that he is financially responsible.

Under the particular circumstances of this case, Applicant has not met his burden of proving that he is worthy of a security clearance. His circumstances have precluded him from showing financial responsibility, and he has not demonstrated the eligibility requirements for access to classified information. His history of excessive indebtedness does not demonstrate that he can properly handle his financial affairs. In addition, he has fairly recently had one property foreclosed upon, and another short sold. Assuming that he demonstrates a history and pattern of financial responsibility, including the fact that he has not acquired any new debt that he is unable to pay, he may be eligible for a security clearance sometime in the future. However, he is not eligible now. Considering all of the evidence, Applicant has not 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. It can be argued that Mitigating Condition 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* applies. However, this mitigating condition is not controlling. Applicant has simply been unable to resolve his debts without getting into deeper debt. He could benefit from some intense financial counseling. In this case, none of the mitigating conditions are applicable. Accordingly, I find against the 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, supports a whole-person assessment of poor judgement, untrustworthiness, unreliability, a lack of candor, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

I have considered all of the evidence presented. It does not 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 not overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against 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 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.	Against the Applicant.
Subpara. 1.b	Against the Applicant.
Subpara. 1.c.	Against the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge