



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 14-03434
)
Applicant for Security Clearance)

Appearances

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

October 29, 2015

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on February 17, 2014. (Government Exhibit 1.) On November 5, 2014, 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 December 5, 2014, and he requested an administrative hearing before a Defense Office of Hearings and Appeals (DOHA) Administrative Judge. This case was assigned to the undersigned Administrative Judge on May 5, 2015. A notice of hearing was issued on June 3, 2015, and the hearing was scheduled for June 23, 2015, by video-teleconference. At the hearing the Government presented three exhibits, referred to as Government Exhibits 1 through 3, which were admitted without objection. The Applicant presented no exhibits. He testified on his own behalf. The record remained open to allow the Applicant to submit additional documentation. Applicant submitted one Post-Hearing Exhibit, referred to

as Applicant's Post-Hearing Exhibit A. The official transcript (Tr.) was received on July 2, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

Applicant is 53 years old, and married with three adult children. He has a Bachelor's degree in Communications. He holds the position of Senior Trainer 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 each of the allegations set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) There are twelve delinquent debts of concern to the Government that total in excess of \$20,000. Credit Reports of the Applicant dated March 4, 2014; and February 4, 2015, reflect that Applicant was at one time indebted to each of the creditors set forth in the SOR. (Government Exhibits 2 and 3.)

Applicant joined the United States Army at the age of eighteen, served honorably for twenty years, and retired as a Staff Sergeant. During his military career he received many awards and decorations, which include several Army Achievement Medals, several Army Commendation Medals, a Meritorious Service Medal, and six Good Conduct Medals, among others. (Applicant's Post-Hearing Exhibit A, p. 2.) In the military he held various positions that required a security clearance and never incurred a security violation.

Applicant's financial record was in good standing until about 2009/2010. He began working for his current employer in 2007. To take the job he had to move out of state, leaving his house and wife behind. Maintaining two households was costly and Applicant was forced to live on his credit cards. Although his new company gave him a moving allowance, it was not enough to cover all of his expenses. Applicant also suffered significant medical problems including hernias and feet problems that required numerous doctor visits and several surgeries. As a result, he missed large periods of work and had a substantial cut in pay. (Tr. p. 30.) He received temporary disability insurance, but it paid him only half of his salary. During this period, Applicant tried to stay current with his mortgage payments, rent and car payment, but his other bills fell behind.

The delinquent debts set forth in the SOR became owing. Allegations 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., and 1.g., of the SOR are delinquent medical accounts. Applicant testified that he thought that they were being paid by his medical insurance coverage. He later learned that they were co-pays on medical bills that he was responsible for. Since returning to work, he has paid them off. (Tr. p. 26 and Applicant's Post-Hearing Exhibit A, pp. 20-23.) Allegation 1.h., is also a delinquent medical account, which was paid in full. Applicant submitted a copy of the payment receipt. (Tr p. 28, and Applicant's Post- Hearing Exhibit A, p. 24.)

Allegations 1.k., and 1.l., are delinquent credit card accounts. Applicant contacted the creditors to set up payments and was told that the debts were charged off. He was under the impression that it was too late to pay them and that they were no longer owing. Applicant recently received a Form 1099C from the IRS requesting \$2,500 in taxes for the debt forgiveness related to his charged-off credit cards. Applicant paid the taxes in full. Applicant also provided a statement from creditor in 1.k., showing a zero balance account. (Applicant's Post-Hearing Exhibit A, pp. 29-32.)

Allegation 1.i., is a delinquent military credit card that since May 2014 is being paid through automatic payroll deductions. (Tr. p. 29 and Applicant's Exhibit A, pp. 25-26.) Allegation 1.j., is a creditor that has been paid in full. Applicant submitted a copy of the payment receipt. (Tr. p. 25, and Applicant's Post-Hearing Exhibit A, pp. 27-28.)

Applicant currently earns about \$4,600 monthly, his wife earns about \$1,800 monthly, and he receives about \$1,200 a month for military retirement and disability. (Tr. p. 39.) He states that his health has improved, he no longer misses work, and he can comfortably pay his bills.

A letter from Applicant's first line supervisor reveals that he considers the Applicant's job performance to be exemplary. To further demonstrate this, Applicant was recently recommended for promotion. His supervisor also confirms the fact that Applicant's health problems have caused him to miss many days and hours of work. When he returned to work, he returned ready to work and eager to continue where he left off, while maintaining exceptional work. He is a trusted employee and a valued asset to the company. (Applicant's Post-Hearing Exhibit A, p. 18.)

Applicant's most recent performance review dated June 30, 2015, reflects an overall rating of 3.8 out of 4. He either "meets expectations" or "exceeds expectations" in every category. (Applicant's Post-Hearing Exhibit A, pp. 13-17.) Applicant has also received a number of awards and certificates for his work performance. (Applicant's Post-Hearing Exhibit A, pp. 3-12.)

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 adjudication 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 . . . 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 excessive indebtedness or financial irresponsibility, which demonstrate 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 circumstances beyond the Applicant's control contributed to his financial problems. Namely, having to take a new job out of state and paying for two households simultaneously was expensive. To compound the problem, a series of unexpected health problems caused him to miss a significant amount of work, which further reduced his pay and prevented him from paying his bills in a timely manner. Applicant was forced to live on credit cards for a time that further complicated the matter. None of these hardships were his fault. He was not living beyond his means or intentionally failing to pay his bills. In fact, he made every effort to continue to pay the mortgage and other necessary monthly expenses, but fell behind on his medical bills and credit cards. When Applicant's health improved, he went back to work, contacted his creditors, and paid all of the delinquent debts, except the ones that he was told were charged off, which he believed he could no longer pay. When he was notified by the IRS that he owed taxes on the credit card debt forgiveness, he paid the taxes.

Under the particular circumstances of this case, the Applicant has acted reasonably and responsibly and in good-faith. He understands that he must remain fiscally responsible if he is to hold a security clearance, this means that he is committed to living within his means and satisfying all of his financial obligations in a timely fashion. He has not lived outside of his means or incurred any new debt that he cannot afford to pay. He has paid all of his debts with the exception of one that is being paid through automatic payroll deductions. There is clear evidence of financial rehabilitation. In the event that he cannot meet his financial obligations in the future, his security clearance will again be immediately in jeopardy. However, at this time, 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. 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 the Applicant under Guideline F (Financial Considerations).

I have also considered the “whole-person concept” in evaluating the 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 judgment, trustworthiness, reliability, candor, and 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 mitigates the negative effects of his financial indebtedness and the impact that it can have on his ability to safeguard classified information. On balance, it is concluded that the Applicant has overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding for the 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 the Applicant.
Subpara. 1.a.:	For the Applicant.
Subpara. 1.b.:	For the Applicant.
Subpara. 1.c.:	For the Applicant.
Subpara. 1.d.:	For the Applicant.
Subpara. 1.e.:	For the Applicant.
Subpara. 1.f.:	For the Applicant.
Subpara. 1.g.:	For the Applicant.
Subpara. 1.c.:	For the Applicant.
Subpara. 1.d.:	For the Applicant.
Subpara. 1.e.:	For the Applicant.
Subpara. 1.f.:	For the Applicant.
Subpara. 1.g.:	For the Applicant.
Subpara. 1.h.:	For the Applicant.
Subpara. 1.i.:	For the Applicant.
Subpara. 1.j.:	For the Applicant.
Subpara. 1.k.:	For the Applicant.
Subpara. 1.l.:	For the 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 the Applicant.

Darlene Lokey Anderson
Administrative Judge