



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



In the matter of:)	
)	
-----)	ISCR Case No. 15-02172
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Catie E. Young, Attorney At Law, Griffith, Young & Lass

January 28, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing, (e-QIP) on June 8, 2012. (Government Exhibit 1.) On April 26, 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 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 May 19, 2015, and he requested a hearing before a Defense Office of Hearings and Appeals Administrative Judge. This case was assigned to this Administrative Judge on July 16, 2015. A notice of hearing was issued on August 12, 2015, scheduling the hearing for September 22, 2015. At the hearing the Government presented five exhibits, referred to as Government Exhibits 1 through 5 which were admitted without objection. The Applicant presented thirteen exhibits, referred to as Applicant's Exhibits A through M, which were admitted without objection.

He also testified on his own behalf. The record remained open until close of business on September 30, 2015, to allow the Applicant to submit additional supporting documentation. Applicant submitted five Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits N through R, which were admitted without objection. The official transcript (Tr.) was received on September 30, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

The Applicant is 48 years old and divorced with one adult son. He has a Master's Degree in Business Administration. He holds the position of Information Technology Consultant/Module Lead 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.

The Applicant admitted each of the three allegations set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated June 12, 2012; January 7, 2015; and July 6, 2015, reflect that Applicant was at one time indebted to each of the creditors set forth in the SOR, in an amount totaling approximately \$40,000. (Government Exhibits 2, 3 and 4.) Applicant has since resolved each of the delinquent debts. He has been working for his current employer since 2009. He received his first security clearance in 2004 while employed with another defense contractor.

1.a. A judgment was filed against the Applicant in 2008 in the amount of \$3,760 by a state for unemployment benefits. The matter has been resolved. Applicant explained that in 2008, when he was laid off from his job, he filed for unemployment. He received unemployment benefits from about late 2008 through April 2009, when he obtained a new job. His new employer called him in for training with the understanding that his hire date would start after training was completed. Applicant contacted the state, informed them about it, and was told that there should be no problem. Following the training, the employer decided to backdate the hire date instead of separately paying the Applicant for the training. The state came back and wanted the money they had paid the Applicant, since they considered him to be working during this period. Applicant went to a hearing on the matter and the judge determined that Applicant was not liable under these circumstances. Applicant provided a copy of the Full

Acknowledgment of Satisfaction of Judgment dated September 13, 2012, and hearing decisions. (Applicant's Exhibits A, B, C and D.)

1.b. Applicant was indebted to a creditor for a delinquent student loan that was placed for collection in the amount of \$35,334. The debt has been paid. Applicant testified that he was taking several certification classes in the IT field. The program was intended to be a year long. A few weeks after he started, his student loans were signed, and the school closed down. Applicant contacted the creditor and was told that he needed to pay the loan. Applicant was later contacted by a legal representative inviting him to be a part of a class action suit against the school. Applicant had to pay a retainer of \$4,000 for legal representation. Applicant later learned that this firm was a scam. He contacted the creditor again and they offered to settle the matter with him for \$11,000. Applicant had the money in savings so he paid the debt, and provided copies of a letter from the creditor confirming final settlement payment. (Applicant's Exhibit E.) Applicant testified that he received an IRS Form 1099C and paid taxes in 2013 on the forgiveness. (Tr. p. 51.) He provided a copy of the IRS Form 1099C Cancellation of Debt by the creditor dated 2013. (Applicant's Exhibit R.)

Applicant currently owes other student loans in the amount of \$106,000. He is current on the loans and is making regular monthly payments in the amounts of \$386 and \$219 respectively. (Tr. p. 39.)

1.c. A delinquent debt owed to a creditor in the amount of \$327 has been paid. Applicant explained that he was rear-ended on his way to work, which caused a three car collision. He was sent to two hospitals that work in conjunction with each other for whiplash. After receiving service, Applicant paid the bill. During his security clearance background investigation, he was informed that a bill remained outstanding. He contacted the hospitals involved and paid the debt. Applicant provided a copy of the payment in the amount of \$408.52. (Applicant's Exhibit F and Tr. p. 41.) He also submitted a request to have the adverse information deleted from his credit report. (Applicant's Exhibit F.)

Applicant's personal financial statement indicates that he is in good financial standing. (Applicant's Exhibit N.) After his monthly expenses are paid, he has between \$1,000 to \$1,200 left at the end of the month. (Tr. p. 44.) Applicant also has savings and checking account, retirement plan with his employer, and an e-trade account. (Applicant's Exhibit G, H and I.)

Performance appraisals of the Applicant for the years 2009, 2010, 2013 and 2014 are favorable. They collectively reflect that he either "meets or exceeds expectations" in very category. (Applicant's Exhibit O.) Applicant has also received numerous awards and recognitions throughout the years for his work product. (Applicant's Exhibit Q.)

A letter from the Applicant's Program Manager dated September 1, 2015, who has known the Applicant since he was hired in 2009, indicates that Applicant is a hard

working professional, with strong leadership and interpersonal skills. He is a very positive and organized employee. Applicant is said to effectively manage his workloads, teammates, customers, and end users to accomplish the company's objective of superior customer support. Applicant is considered to be a valued asset to the company. He is recommended for a security clearance. (Applicant's Exhibit J.)

Other letters of recommendation from professional associates of the Applicant indicate that Applicant is incredibly intelligent, hard working, and a pleasure to work with. He consistently demonstrates that he is responsible and trustworthy. He is considered to be an asset of any team and highly recommended for a security clearance. (Applicant's Exhibit P.)

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 circumstances beyond his control primarily caused his financial difficulties. A judgment entered against him through no fault of his own. Student loans that he owed even though the school closed without giving him the benefit of his bargain. A hospital bill that he had no knowledge of because he had already paid one. Mistakes happen, but these mistakes were really not the Applicant's mistakes. Under the circumstances, Applicant has submitted compelling documentary evidence showing that he has acted responsibly and reasonably in every instance. He has shown good-faith by repaying his financial obligations, and resolving his financial indebtedness. 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 has worked in the defense industry for many years and has never incurred a security violation. He has made a good faith effort to resolve his debts and has demonstrated honesty and trustworthiness.

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 demonstrated that he is sufficiently trustworthy, and does meet the eligibility requirements for access to classified information. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

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 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