



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 14-02260
)
Applicant for Security Clearance)

Appearances

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

April 10, 2015

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (E-QIP) on October 1, 2013. (Government Exhibit 1.) On July 18, 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 Department of Defense (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 August 27, 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 February 10, 2015. A notice of hearing was issued on February 19, 2015, and the hearing was scheduled for March 19, 2015. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant presented four exhibits, referred to as Applicant's Exhibits A through D, which were also admitted into evidence without objection. He also testified on his own behalf. The record remained open until close

of business on April 2, 2015, to allow the Applicant to submit additional documentation. Applicant submitted two Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A and B, which were admitted without objection. The official transcript (Tr.) was received on March 30, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

Applicant is 66 years old and married with five children, that include four step-children, and one biological child from a previous marriage. He has completed two years of college. He holds the position of Aircraft Mechanic 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 March 19, 2014; June 5, 2014; and December 22, 2014, reflect that Applicant is indebted to each of the creditors set forth in the SOR. (Government Exhibits 2, 3 and 4.)

Applicant was born in the Philippines, and served in the Filipino Air Force for twelve years. He came to the United States in 1982. He became a naturalized citizen in 2004. He is proud to be an American, and states that he would never do anything to jeopardize the national security. (Tr. p. 53.) He has worked for the same defense contractor for the past thirteen years, and has never received any disciplinary action from work.

On April 13, 2012, Applicant was involved in a car accident that was not his fault. He suffered injuries as a result of the accident and filed a lawsuit against the party at fault. Applicant incurred a number of medical bills related to the accident. Two medical bills were placed into collection. Allegations 1.a., a medical debt in the amount of \$938, and 1.b., a medical debt in the amount of \$337. Both of these debts have now been paid in full by the party at fault. (Tr. pp. 33-35, and Applicant's Exhibit B.) On January 13, 2015, Applicant was awarded \$13,810.42 to settle the matter. (Applicant's Exhibit A.)

Applicant purchased a house in 2006 by obtaining a first and a second mortgage. For about four or five years, he lived in the house and comfortably paid the

mortgages in a timely basis. At that point the mortgages adjusted, and his monthly mortgage payment amount doubled. He could no longer afford the house. After consulting with a realtor about his situation, both lenders on the first and second mortgages recommended and approved a short sale. Applicant had a serious buyer for the property when the lender put the house up for auction and foreclosed upon it. The lender holding the first mortgage has made no contact with the Applicant. The second mortgage on the property was placed into collection. Allegation 1.c., is the debt owed on the second mortgage in the amount of \$41,564. (Applicant's Exhibit C.) At the time of the hearing, Applicant was negotiating a settlement with the lender on the second mortgage. The lender had offered to settle the matter for \$5,995. (Applicant's Exhibit C.) Applicant has countered with a \$3,000 offer. He was awaiting the lender's response. He has informed them that his wife is disabled and has been laid off from her job, and is hoping they will accept his offer. (Tr. pp. 43-45.) Applicant plans to resolve the debt as soon as he receives their response.

Applicant submitted two Post-Hearing Exhibits A and B indicating that Applicant reached a settlement with the lender in the amount of \$3,985.32 that was due on March 31, 2015. Applicant paid the amount in full on April 1, 2015, through a wire request from his credit union. I will assume the lender accepted the payment and settled the debt.

Applicant currently earns about \$45,000 annually. After paying his regular monthly expenses such as rent and utilities, food and medicine, he has money left over at the end of the month. He also has about \$4,000 in his savings and checking accounts. He has a 401(k) that contains about \$23,000. He is current with all of his other bills. Applicant has already filed his income tax returns for this year and paid the taxes owed. (Tr. p. 52.)

Two letters of recommendation were submitted on Applicant's behalf. His site manager, who is his supervisor, describes Applicant as a mature, self-motivated and resourceful individual. He is reliable, responsible, and trustworthy, and exercises mature judgment at all times. The company human resources coordinator indicates that Applicant is a dedicated employee, with an excellent work performance history, who has never had any disciplinary action imposed on him. They both highly recommended the Applicant for a security clearance. (Applicant's Exhibit D.)

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 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 circumstances largely beyond the Applicant's control contributed, if not caused, his financial problems. Applicant's delinquent medical bills were caused by a car accident that was not his fault. The lawsuit was settled and the medical bills were paid by the party at fault. In regard to the second mortgage on his house that was foreclosed upon, Applicant made the payments on the house for as long as he could. When the loan adjusted so high he could no longer afford to pay it, he contacted the lender and was approved to short sale the house. While working with a serious buyer, the lender decided at the last minute to sell the house at auction and foreclose upon it. Applicant has recently settled the matter with the lender.

Under the circumstances, Applicant is making a good-faith effort to resolve his debts. He understands that he must remain fiscally responsible if he is to hold a security clearance. He has not incurred any new debt that he cannot afford to pay, and he has resolved the debt he owed to the lender for his second mortgage. There is clear evidence of financial rehabilitation. In the event that he cannot meet his financial obligations in the future, his security clearance will 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* also apply. 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, including the favorable letters of recommendation. It mitigates the negative effects of his financial indebtedness and the effects 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.

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