



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 14-03851
)
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Strzelczyk, Department Counsel
For Applicant: *Pro se*

October 29, 2015

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) dated April 18, 2014. (Government Exhibit 2.) On January 23, 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) 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 in writing on February 19, 2015, and elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to Applicant on May 28, 2015. Applicant received the FORM on July 8, 2015. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant did not submit a response to the FORM. This case was assigned to the undersigned on September 22, 2015. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 50 years old, and married with six children. He has completed his GED and several university level certificate programs in software related areas. He is employed with a defense contractor as a Senior Systems Engineer Consultant 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.

Applicant served in the United States Army in either reserves or on active duty from August 1983 to February 2005, when he retired with an honorable discharge. During his time in the military, he held a security clearance.

Applicant has a history of financial indebtedness. There are thirteen delinquent debts set forth in the SOR that total in excess of \$69,738. Applicant admitted to allegations 1.a., not filing his state income tax returns; 1.c. and 1.d., to being indebted for two Federal tax liens; 1.e., a judgment; and 1.q., one of the delinquent debts. In regard to the delinquent debts set forth in 1.b., 1.f., 1.g., 1.h., 1.i., 1.j., 1.k., 1.l., 1.m., 1.n., 1.o., 1.p., and 1.r, he denies them, claiming that he has paid them. He failed to provide any documentary evidence to substantiate the payments. Applicant has been employed on a full-time basis with his current employer since April 2010.

Applicant's credit report dated April 29, 2014, which includes information from all three credit reporting agencies, reflect that Applicant is indebted to each of the creditors set forth in the SOR. (Government Exhibit 4.)

According to Applicant's answer to the SOR, Applicant became excessively indebted without his knowledge. He stated that his wife has always handled the household finances. He thought that she was paying the bills on time and without difficulty. He states that he did not learn of his delinquent debts until he met with the investigator during his security clearance background investigation in May 2014. (Government Exhibit 3.) The following debts show delinquent and owing on his credit report. (Government Exhibit 4.)

1.a. Applicant failed to file his 2010, 2011, and 2012, state income tax returns. He states that he did not have the money to pay the taxes he owed and so he simply "blew it off." (Government Exhibit 3.) He claims that he and his wife have since set up a payment arrangement with the state and they are currently paying their taxes. There is no documentary evidence to show that these taxes have been paid or are being paid.
1.b. A state tax lien was issued against the Appellant in April 2014 for unpaid state

taxes. This remains owing. There is no documentary evidence to show that this lien has been paid.

1.c., and 1.d. Two federal tax liens were entered against the Applicant, one in May 2011, for \$36,075; and the other in October 2011, in the amount of \$3,790. Both liens remain unpaid, as there is no documentary evidence to show that they have been paid.

1.e. A judgment filed against the Applicant by a financial institution in the amount of \$19,762 for a boat that Applicant purchased and defaulted on remains owing. Applicant stated that he has paid down some of the debt and is currently making payments of \$1,000 monthly. There is no documentary evidence in the record to support this claim.

1.f. A delinquent medical account in the amount of \$424 remains owing. Applicant stated that he is unaware of the debt. 1.g. A collection account in the amount of \$182 remains owing. Applicant stated that he was unaware of the debt. 1.h. A collection account in the amount of \$704 remains outstanding. Applicant stated that he was unaware that he owed the debt. 1.i. A collection account in the amount of \$469 remains owing. Applicant stated that he was unaware that the debt was outstanding. 1.j. A collection account in the amount of \$689 remains outstanding. Applicant stated that he was unaware of the debt. 1.k. A collection account in the amount of \$264 remains outstanding. Applicant stated that he was unaware of the debt. 1.l. A medical account in the amount of \$100 remains owing. Applicant stated that he was unaware that the debt went into collections. 1.m. A medical account in the amount of \$70 remains owing. Applicant stated that he was unaware that the debt went into collections. 1.n. A medical account in the amount of \$250 remains outstanding. Applicant stated that he was unaware of the debt. 1.o. A medical account in the amount of \$582 remains owing. Applicant stated that he was unaware that the debt went into collections. 1.p. A delinquent account owed to Verizon in the amount of \$168 remains owing. Applicant stated that he was unaware that the account went into collections. 1.q. A delinquent utility account in the amount of \$339 remains owing. Applicant stated that he was unaware that the account went into collections. 1.r. A delinquent child support debt in the amount of \$3,060 remains owing. Applicant states that he has never missed a child support payment and does not know why this is showing a collection balance. (Government Exhibit 3.)

Applicant failed to submit a reply to the FORM. There is no documentary evidence to show that he has repaid any of his financial obligations. There is no evidence of a meaningful track record of repayment or a substantiated basis to dispute the legitimacy of the debts.

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:

None.

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 remains excessively indebted. Absent compelling documentary evidence that Applicant acted responsibly and in good faith to repay his financial obligations, or that he established a track record of repayment, or has a substantiated basis to dispute the legitimacy of the debt, he has failed to show sufficient mitigation under Guideline F.

In this case, Applicant failed to provide any documentary evidence to show that he has resolved his debts. Simply because he states that he has paid them does not prove that the debt has been resolved. Also, simply because he was not aware of them does not mean he does not owe them. If he does not believe he owes them, he has the burden of proving that he does not owe them. At the present time, he remains delinquently indebted to all of the creditors set forth in the SOR, totaling approximately \$69,000. There is no evidence of any efforts to repay the debts, be it prior to or after receipt of the SOR. There is no evidence of even an attempt to pay the smallest of the debts, which is only \$100. In the absence of documentary evidence submitted in response to this FORM to show that Applicant has been able to attain some resolution on his delinquent debts and establish a track record of debt repayment, this concern must be decided against him in evaluating his suitability to have access to classified information.

Applicant's history of excessive indebtedness, without sufficient mitigation, demonstrates a pattern of unreliability and poor judgment. Applicant failed to provide proof of payment, receipts, or any documentation to demonstrate that he has, can, or will resolve his delinquent debts. There is nothing in the record to show that Applicant can live within his means. Without more, Applicant has failed to establish that he is fiscally responsible. Furthermore, there is no evidence that he has received credit counseling to help him set a budget and learn to live within it, or that his finances are under control.

Under the particular circumstances of this case, Applicant has not met his burden of proving that he is worthy of a security clearance. He has not sufficiently addressed the delinquent debts in the SOR, and does not have a concrete understanding of his financial responsibilities. Thus, it cannot be said that he has made a good-faith effort to resolve his past-due indebtedness. He has not shown that he is or has been reasonably, responsibly or prudently addressing his financial situation. Applicant has not demonstrated that he can properly handle his financial affairs or that he is fiscally responsible. His debts are significant. Assuming that he demonstrates a history and pattern of fiscal responsibility, including the fact 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. There is no evidence in the record to show that Applicant has done

anything to resolve his debts. In fact, from what is presented, Applicant could benefit from 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, support 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.
Subparas.	1.b.	Against the Applicant.
Subpara.	1.c.	Against the Applicant.
Subparas.	1.d.	Against the Applicant.
Subpara.	1.e.	Against the Applicant.
Subpara.	1.f.	Against the Applicant.
Subparas.	1.g.	Against the Applicant.
Subpara.	1.h.	Against the Applicant.
Subparas.	1.i.	Against the Applicant.
Subpara.	1.j.	Against the Applicant.
Subpara.	1.k.	Against the Applicant.
Subparas.	1.l.	Against the Applicant.
Subpara.	1.m.	Against the Applicant.
Subparas.	1.n.	Against the Applicant.
Subpara.	1.o.	Against the Applicant.
Subpara.	1.p.	Against the Applicant.
Subparas.	1.q.	Against the Applicant.
Subpara.	1.r.	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