



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-06698

Appearances

For Government: Jeff A. Nagel, Department Counsel

For Applicant: *Pro se*

February 2, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) March 27, 2013. (Government Exhibit 1.) On May 22, 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 on June 18, 2015, and he requested a hearing before a Defense Office of Hearings and Appeals (DOHA) Administrative Judge. This case was assigned to this Administrative Judge on September 15, 2015. A notice of hearing was issued on September 21, 2015, and the hearing was scheduled for October 7, 2015. At the hearing the Government presented five exhibits, referred to as Government Exhibits 1 through 5. Applicant presented three exhibits, referred to as Applicant's Exhibits A through C. He also testified on his own behalf. Applicant requested that the record remain open in order to submit additional documentation. The

record remained open until close of business on October 21, 2015. Applicant submitted seven Post-Hearing Exhibits which were admitted without objection, and are referred to as Applicant's Post-Hearing Exhibits A through G. The official transcript (Tr.) was received on October 15, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 30 years old, and single. He has a high school diploma, attended some college classes, and earned some training certificates related to his job. He is employed with a defense contractor as a Data Entry Clerk 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 seven delinquent debts set forth in the SOR totaling approximately \$28,000. Applicant admitted each of the allegations under this guideline. Credit reports of Applicant dated April 4, 2013; May 9, 2014; August 31, 2015; and October 6, 2015, which include information from all three credit reporting agencies, indicate that at one time he was indebted to each of the creditors listed in the SOR. (Government Exhibits 2, 3, 4, and 5.) Applicant has been employed with his current employer since 2012.

Applicant attributes his delinquent debts to being young and stupid. He thought at one time that he did not have to pay his medical bills because he did not realize that they could appear as being delinquent on his credit report. (Tr. p. 23.) He simply ignored the medical bills. He explained that, in 2011, he suffered from a serious illness which prevented him from working for about six months.

In 2012, he started working for his current employer. Three months after starting he applied for and was given a security clearance. Applicant states that when he met with the investigator during his security clearance background investigation, he was told about his delinquent debts. It was at that time that Applicant learned that he was required to pay his medical bills, and if he did not pay them, an adverse report would be made to his credit report. Applicant states that he contacted the creditors, and set up payment arrangements. Due to some misunderstandings, several of the debts were not paid until sometime in 2015. Applicant claims that he is older now and understands that his credit report is critical if he is to ever purchase a house or obtain a clearance. He currently lives with his family, and does not pay rent. He earns about \$1,600 a month. He has a car payment of \$485.83, a cell phone bill of about \$140; and three credit card

bills for \$22, \$25, and \$87 respectively. He also now has car insurance that he pays for. At the end of the month, he is saving money. He currently has about \$650 in his checking account. He also has a 401K. He believes his finances are now stable.

1.a., and 1.b., Applicant was indebted for medical bills in the amounts of \$162 and \$343 respectively. Applicant paid both of the debts on June 15, 2015, for a total of \$840. (Tr. p. 28 and Applicant's Post-Hearing Exhibit B.)

1.c., A judgment was filed against the Applicant in 2006, the amount of \$3,019. Applicant explained that he was driving on the freeway when someone rear-ended his bumper. The other driver took off and Applicant's car spun around and hit another car. (Tr. p. 29.) Applicant was taken to small claims court and a judgment was entered against him. He agreed to pay \$250 a month with the condition that if he was late with a payment, he would be required to pay the total amount of the judgment in one lump sum. Applicant made several payments and then decided to pay off the judgment. He opened an account with cash call and paid the judgment including fees in the amount of \$3,124 on February 9, 2007. (Applicant's Post-Hearing Exhibit C.)

1.d. and 1.e., Two judgments were filed against the Applicant in 2007, in the amount of \$10,406 and \$12,614 respectively. Applicant believes the outstanding debt is approximately \$22,000. (Tr. p. 36.) This debt remains outstanding. This was for a brand new car that Applicant's mother purchased for him, but he was a cosigner on the loan, and he made the payments. After about a year of making payments, the car was totaled in an accident. Applicant did not have insurance on the vehicle at the time. Applicant's mother filed Bankruptcy and discharged the debt. Applicant states that the debt is no longer on his credit report, but he has not paid the debt. Applicant states that if he finds this to be a valid debt that he must pay, he will pay it. (Tr.p. 35.) He states that over the years, he has called the creditor many times, and they state that they have no record of the debt. Most recently, Applicant contacted and the creditor and was told that the person handling the loans was not in that day. He left his number. (Applicant's Post-Hearing Exhibit D.)

1.f., Applicant was indebted to a creditor in the amount of \$98. Applicant paid the account in full on June 15, 2015, in the amount of \$106.24 including fees. (Applicant's Post-hearing Exhibit E.)

1.g., Applicant was indebted to a creditor in the amount of \$294. He states that he is currently in negotiations with the creditor. The account remains owing in the amount of \$284.55. (Applicant's Exhibit F.)

Letters of recommendation from his current and past supervisors, coworkers and friends attest to his intelligence, polite manner, willingness to learn, and professionalism. He is noted for his good performance on the job. He is said to be hardworking, honest, reliable and trustworthy. He is recommended for a security clearance. (Applicant's Post-Hearing Exhibit G.)

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 behavior 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 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 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 demonstrated a lack of knowledge concerning his financial affairs. When he incurred delinquent debts he could not afford to pay, he simply ignored them. He was not financially responsible. He attributes this to being young and stupid. Since then, he had paid off four of the seven debts set forth in the SOR. He states that he is older now and more responsible, and asks questions now. Admittedly, he has been working to resolve his debts. However, his largest debts, totaling about \$22,000, remain owing, and have not been addressed.

Applicant's history of excessive indebtedness demonstrates immaturity, a pattern of unreliability, and poor judgment. Applicant testified that he lives with his family and does not pay rent. Outside of the delinquent debts in the SOR, he does not have a lot of other financial obligations. There is really no excuse why, by now, he has not started to resolve the larger debts or even inquired into whether he continues to owe them. Without more, the Applicant has failed to establish that he is financially 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 does not have a concrete understanding of his financial responsibilities and has not sufficiently addressed his delinquent debts in the SOR. 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 indebtedness is 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. None of the mitigating conditions are applicable. Applicant was irresponsible. He ignored his bills for some time, and only recently has been working to set up payment plans to resolve his delinquent debts. Two of his delinquent debts have not yet been addressed. One is a large debt. 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.	For the Applicant.
Subpara.	1.b.	For the Applicant.
Subpara.	1.c.	For the Applicant.
Subpara.	1.d.	Against the Applicant.
Subpara.	1.e.	Against the Applicant.
Subpara.	1.f.	For the Applicant.
Subpara.	1.g.	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 Applicant. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge