



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 12-05959
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Department Counsel
For Applicant: *Pro se*

January 28, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) March 4, 2014. (Government Exhibit 1.) On July 10, 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 August 11, 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 October 13, 2015. A notice of hearing was issued on October 15, 2015, and the hearing was scheduled for November 18, 2015. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6. The Applicant did not present any exhibits, but called one witness to testify on his behalf. 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 November 25, 2015. Applicant submitted one Post-Hearing Exhibit which was admitted without objection, and is referred to as Applicant's Post-Hearing Exhibit A. The official transcript (Tr.) was received on November 30, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 48 years old, has been married three times, and has five children from these marriages. He has a high school diploma, two years of trade school, and one year of college. He is employed with a defense contractor as an Electrician III 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 five delinquent debts set forth in the SOR totaling in excess of \$28,000. Applicant denied each of the allegations under this guideline, except 1.c. In regard to 1.c., he states that he has paid the debt. Credit reports of the Applicant dated March 19, 2014; February 21, 2014; and September 30, 2015, which includes information from all three credit reporting agencies, reflect that except for 1.c. and 1.d., he remains indebted to the remaining three creditors listed in the SOR. (Government Exhibits 3, 4 and 5.) Applicant has been employed with his current employer since October 2013.

Applicant's history of financial problems go back as far as twenty-five years or more. Before addressing the allegations in the SOR, Applicant admitted to a series of financial problems in the early 1990's related to driving on a suspended driver's license, and failures to appear for warrants. His wages were also garnished for child support arrears in 1995. In 1996, he purchased a truck and within 24 hours determined that it was a lemon and returned it to the dealer. The creditor ultimately charged off \$9,000 as a result of this transaction.

Turning to the SOR, in 2003, he and his second wife owned three properties. They lived in one property, and had renters, subsidized by a government program, who helped pay the mortgages on the other two properties. When Applicant and his wife separated in 2011, she moved into one of the properties and he into another. They continued to spend money that they did not have. They incurred delinquent debts that they could not pay.

1.a., A delinquent debt in the approximate amount of \$5,066 for a judgment entered against the Applicant for attorney fees and a rental deposit. Applicant explained that he and his second wife separated in March 2011. They entered into an unofficial agreement at the kitchen table that she would live and take care of one house, and he would live and take care of one of the rentals. After the tenant moved, the Applicant learned from his wife that the rental property was in very poor condition. The water heater had been damaged, there were broken or missing window screens, there was animal urine and feces stains and odors, and a flea infestation. The tenant had failed to abide by the lease agreement that prohibited pets without the prior written consent of the landlord. The carpets and flooring had to be completely replaced. Applicant and his wife decided not to refund the tenant's deposit.

In October 2012, Applicant learned that there was a default judgment entered against him. Applicant did nothing to overturn the default judgment. Applicant stated that he thought his wife was solely responsible for the rental property since the court awarded the property to her in April 2011. The judgment remains outstanding.

Applicant submitted a copy of the actual residential lease agreement entered into between the parties in 2005, which names the Applicant as the only landlord. It states that the tenant is responsible for all damage to the property, and that the tenant is not entitled to her rental deposit in the event that she damages the property. It also details the specific damage done to the property. (Applicant's Post-Hearing Exhibit A.)

1.b., A delinquent debt related to the judgment described above filed in 2011 on behalf of the tenant for her rental deposit. Applicant's credit report indicates a separate judgment filed by the tenant against the Applicant in 2011, for the approximate amount of \$3,217. Applicant states that he believes this is for the rental deposit that was not returned to the tenant. Applicant believes this debt to be his wife's responsibility. The judgment remains outstanding.

1.c., A delinquent debt owed to a cable company was sent to collection in the amount of \$575. Applicant submitted a letter from the creditor indicating that the debt was settled on July 28, 2015, for the amount of \$287.67. (See Applicant's Post-Hearing Exhibit A.)

1.d., A delinquent debt owed to a water company for an account that has been placed for collection in the amount of \$624 is no longer owing. Applicant contends that he paid off the account and returned all empty bottles. He states that all fees and penalties accumulated after the account was closed. (Tr. p. 56.) Applicant submitted an e-mail correspondence from the creditor indicating that the debt was settled for \$290.35 on November 18, 2015. (See Applicant's Post-Hearing Exhibit A.)

1.e., A debt owed to a resort company on a mortgage account that is past due in the approximate amount of \$5,185. This account is in foreclosure status with a total loan balance of \$20,965. Applicant explained that in 1994 he and his wife purchased a time share in Las Vegas. He tried to back out of the transaction but the creditor would

not accept his cancellation. He states that the creditor will now accept \$10,000 to settle the matter. The debt remains outstanding.

Applicant's credit reports show a history of delinquent mortgage accounts not listed in the SOR. Two of the three homes owned by the Applicant and his wife were foreclosed upon or short sold. There are also two recent medical bills sent to collection. One in 2015 in the amount of \$1,572, the other one was sent to collections in 2013 in the amount of \$192. Applicant initially stated that he had no knowledge of these debts. (Tr. p. 41) He later testified that he had paid off the debt. (Tr. p. 74.)

Applicant is now separated from his third wife and is supporting his two minor sons. He explained that she was diagnosed with cancer and went through post-traumatic stress, and rejected him and the children. She moved out in February 2015.

Applicant's current supervisor, who has worked with the Applicant off and on over the course of three years, testified that Applicant's work product is phenomenal. Applicant is considered to be responsible and trustworthy, and is a valuable asset to company. He is recommended for a security clearance. (Applicant's Tr. pp. 84 - 86.)

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.

Condition 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.

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 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 resolved two of the five delinquent debts set forth in the SOR. He remains indebted for the larger debts totaling an amount in excess of \$28,000. Admittedly, there were circumstances that occurred that were beyond the Applicant's control that contributed to his financial problems. Namely, a tenant that damaged his property. However, he did nothing to pursue the matter. He simply ignored the situation. Instead, the tenant filed suit against him for failing to return her rental deposit. It also appears that her attorney's sought a judgment against the Applicant for the tenant's attorney fees. Without more, both judgments entered by the court are valid, and Applicant is held responsible to pay them. In addition, there is no evidence in the record to show that he changed his lifestyle or his spending habits, or that he has worked to resolve the debts listed in the SOR.

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 resolved his delinquent debts. There is nothing in the record to show that Applicant can live within his means. Without more, the 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 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 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. It can be argued that Mitigation Condition 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* applies, because of his tenant situation. However, this mitigating condition is not controlling. Applicant did not act responsibly under the circumstances. He ignored the situation and continued to spend money he did not have. He has still not set up any payment plans to resolve his delinquent debts. 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.
Subpara.	1.b.	Against the Applicant.
Subpara.	1.c.	For the Applicant.
Subpara.	1.d.	For the Applicant.
Subpara.	1.e.	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