



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-06550

Appearances

For Government: Mary M. Foreman, Department Counsel

For Applicant: *Pro se*

June 2, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on February 10, 2012. (Government Exhibit 3.) On August 15, 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 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 August 26, 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 or about December 10, 2015. Applicant received the FORM on December 15, 2015. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant submitted a reply to the FORM dated December 15, 2015. This case was assigned to the undersigned on January 7, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 58 years old, and is married with one child. He is employed by a defense contractor as a Calibration Technician. He 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 Navy in active and reserve status from August 1977 through August 1980, when he was honorably discharged.

Applicant has filed bankruptcy on three separate occasions: in 1998; 2007; and 2012; and he remains indebted to two creditors for debts incurred after the latest bankruptcy filing. Applicant admitted each of the allegations set forth in the SOR, except allegations 1.d., and 1.e., which he denies, as he believes the two delinquent debts were included in his Chapter 13 Bankruptcy, and that the creditors waited until after the Bankruptcy filings to submit their claims. Credit reports of the Applicant dated March 20, 2012; December 23, 2013; July 11, 2014; and March 18, 2015, which includes information from all three credit reporting agencies, indicates that Applicant has filed bankruptcy on three separate occasions as alleged in the SOR, and that he remains indebted to the two creditors listed in allegations 1.d., and 1.e of the SOR. (Government Exhibits 8, 9, 10, and 11.)

In 1998, Applicant filed for Chapter 7 Bankruptcy involving \$40,695 in liabilities; and \$14,137 in assets. (Government Exhibit 7.) Nine years later, his second Chapter 7 bankruptcy involved \$446,017 in liabilities and \$416,090 in assets. (Government Exhibit 5.) Five years later, in March 2012, Applicant filed bankruptcy again, under Chapter 13. Applicant's documents indicate that under his most recent bankruptcy, his creditors have filed approximately \$77,995 in claims, including \$25,114 in mortgage arrears. (Government Exhibit 4.) Applicant states that his most recent Chapter 13 bankruptcy has not been terminated; rather, it was dismissed in error due to his attorney's late filing and remains active. (Government Exhibit 4.)

Recently, Applicant attributes his inability to pay is debts due to adoption expenses, losing overtime hours, and a decrease in his wife's pay. (Government Exhibit 4.) Back in 2002, in his sworn statement to the DoD, he stated that his financial problems were caused by a divorce, an IRS bill for \$6,000 in which he used a credit card to pay at 18% interest, a nine month period of unemployment due to a work relocation, and his parents being terminally ill, which required him to take six months off to take care of them with no income coming in. (Government Exhibit 6.) Applicant has

been working for his current employer since June 2001, and currently hold a secret clearance. (Government Exhibit 3.) Applicant mentions the reasons why he could not pay his bills, but does not adequately explained why when confronted with everyday life experiences, he was unable to handle his finances in a responsible manner.

Instead of paying his bills to handle his indebtedness, Applicant has repeatedly filed bankruptcy since 1998. This indicates an inability or unwillingness to live within his means and manage his finances responsibly. There is no evidence in the record to show that the Applicant can pay his bills on time, in a systematic method, without having to file bankruptcy.

Also noted in this record is the fact that the two remaining debts listed in allegations 1d., and 1.e., of the SOR, are delinquent accounts that were opened after the Applicant filed for his most recent Chapter 13 bankruptcy in March 2012. (Government Exhibits 8, 9, and 10.) This assumption is based on the fact that they bear different account numbers than the creditors listed in the Chapter 13 Bankruptcy. In regard to allegation 1.d., the debt owed to a creditor for a cell phone/service in the amount of \$1,184, was opened in April 2012, a month after Applicant filed for Chapter 13 bankruptcy protection. In regard to allegation 1.e., the debt owed to a creditor for a cell phone/service was opened in April 2014, two years after filing for Chapter 13 bankruptcy and only appears delinquent on his 2014 credit report. (Government Exhibit 9.)

While filing bankruptcy is not an unreasonable means of resolving substantial delinquent debt, repeated filings - absent compelling circumstances indicate a lack of good judgment. This results in a clearly established history of not meeting his financial obligations. In fact, under these circumstances, absent compelling documentary evidence that Applicant has acted responsibly and in good faith to repay his financial obligations, or established a track record of repayment, or otherwise has a substantiated basis to dispute the legitimacy of the delinquent debt, the allegations in the SOR have not been mitigated. Based upon the evidence presented, the Applicant has a history of not meeting his financial obligations.

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;
- 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 that 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 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 Applicant has been financially irresponsible (Guideline F). 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.

The evidence presented shows that over the past eighteen years, Applicant has continued to incur a number of delinquent debts that he has not paid. Instead of trying to pay the debts, he has filed for bankruptcy protection; in 1998, 2007, and 2012. These recurring bankruptcies naturally indicate a serious ongoing problem with his inability to pay his debts on his own. In fact, he has consistently turned to the courts for help. Furthermore, he has failed to show that the two debts listed in the SOR have been resolved, as it appears that they were opened after the last bankruptcy filing and they remain on his credit reports as owing. Thus, there is no evidence in the record to show that Applicant has made a good faith effort satisfy his delinquent debts.

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 has been working for his current employer since June 2001, over fifteen years. It is not clear why he has not been able to pay his debts. Instead of taking responsibility to pay his debts, he has chosen to file bankruptcy on multiple occasions. Although he has received some financial counseling as part of his first bankruptcy filing requirement, it apparently was not helpful, as he has continued to file Bankruptcy on two subsequent occasions. There is insufficient evidence to show a sufficient ratio of current income to debt and expenses to avoid future financial delinquencies. In fact, he has shown that he is not financially responsible.

I have also considered the “whole-person concept” in evaluating Applicant’s eligibility for access to classified information. From the evidence presented, Applicant has not demonstrated a pattern of financial responsibility, as he has not paid any of the delinquent debts set forth 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. He has not demonstrated that he can properly handle his financial affairs.

Under the particular facts of this case, the totality of the conduct forth above, when viewed under all of the guidelines as a whole, support a whole-person assessment of poor judgement, untrustworthiness, unreliability, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not 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. Applicant has not met his burden of proving that he is worthy of a security clearance. Overall, based upon the seriousness of the conduct outlined here, the Applicant has not demonstrated that he is sufficiently trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

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 failed to 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 E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1:		Against Applicant.
Subpara.	1.a.	Against Applicant.
Subpara.	1.b.	Against Applicant.
Subpara.	1.c.	Against Applicant.
Subpara.	1.d.	Against Applicant.
Subpara.	1.e.	Against 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