



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



In the matter of:)
)
-----) ISCR Case No. 12-08395
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Department Counsel
For Applicant: *Pro se*

September 11, 2013

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on February 8, 2012. (Government Exhibit 7.) On a date uncertain, 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 DOHA 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.

The Applicant responded to the SOR on May 23, 2013, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on July 16, 2013. A notice of hearing was issued that same day scheduling the hearing for August 8, 2013. At the hearing the Government presented twelve exhibits, referred to as Government Exhibits 1 through 12 that were admitted without objection. The Applicant presented no exhibits but he testified on his own behalf. The record remained open until close of business on August 22, 2013, to allow the Applicant an opportunity to submit additional documentation. Due to a death in the family, Applicant requested that the record remain open for additional time until

September 6, 2013. Applicant submitted eight Post-Hearing Exhibits referred to as Applicant's Post-Hearing Exhibits 1 through 8, which were admitted without objection. The official transcript (Tr.) was received on August 19, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 37 years old, and is recently divorced with two children. He has a Bachelor's Degree in Electrical Engineering. He is employed with a defense contractor as an Embedded Software Engineer and 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.

The Applicant admitted each of the allegations set forth in the SOR under this guideline. Credit Reports of the Applicant dated March 24, 1999; October 14, 2009; February 28, 2012; April 17, 2013; and August 6, 2013, reflect that the Applicant is indebted to sixteen separate creditors in an amount totaling in excess of \$70,000. (Government Exhibits 2, 4, 8, 10 and 12.) Most of the delinquencies are medical bills, with some credit card debt, student loans and other miscellaneous debts.

Applicant stated that he was married from 2004 to 2011, when he and his wife separated. During his marriage, his wife was never employed outside of the home, but handled all of the finances. He provided all of the financial support for the family and in order to stay employed he was forced to make frequent moves out of state or to another city to find work. On occasion this required that he leave the family behind but he continued to maintain all of their living expenses. He would rent a room or an inexpensive apartment near his job for himself. In 2009, he was hired by his current employer. For the past two and a half years, he and his wife have been involved in their divorce. Their finances have been split. The cost of the divorce was about \$10,000 in attorney fees. During this period, he was unemployed for a total of seven or eight months. Bills fell behind. Unable to obtain a loan modification on his residence, he also had to short sale his house in May 2008. The divorce was final just days before the hearing.

The following delinquent debts became owing and remained outstanding at the time of the hearing: 1.(a) a credit card debt owed to a creditor in the amount of \$502. Applicant's Post-Hearing Exhibits 1 and 2 indicate that he recently paid this debt; 1.(b) a

debt owed to a creditor in the amount of \$75; 1.(c) a debt owed to a creditor in the amount of \$217; 1.(d) a debt owed to a creditor in the amount of \$306; 1.(e) a debt owed to a creditor in the amount of \$3,180; 1.(f) student loans owed to a creditor in the amount of \$70,000; 1.(g) a debt owed to a creditor in the amount of \$131; 1.(h) a debt owed to a creditor in the amount of \$732; 1.(i) a debt owed to a creditor in the amount of \$25; 1.(j) a medical bill owed to a creditor in the amount of \$84; 1.(k) a debt owed to a creditor in the amount of \$88; 1.(l) a medical bill owed to a creditor in the amount of \$76; 1.(m) a medical bill owed to a creditor in the amount of \$162; 1.(n) a debt owed to a creditor in the amount of \$397; 1.(o) a debt owed to a creditor in the amount of \$130; 1.(p) a debt owed to a creditor in the amount of \$40.

The Applicant's assets were frozen during the divorce, and so he has not been able to resolve any of his delinquent debt. (Applicant's Post-Hearing Exhibit 6.) He indicated that his attorney is in the process of drafting a property settlement agreement that will stipulate that the medical bills will be paid by Applicant and his wife equally, and that he will be responsible to pay for all of his own debts. (See Applicant's Post-Hearing Exhibit 4.)

Applicant's annual salary is \$104,000. (Applicant's Post-Hearing Exhibit 8.) He indicates that according to the settlement, he has agreed to pay his ex-wife \$1,575 in child support and \$840 in alimony on a monthly basis. (Applicant's Post-Hearing Exhibit 5.) His personal financial statement indicates that after paying his regular monthly expenses he has \$469 left at the end of the month. (Applicant's Post-Hearing Exhibit 7.)

Applicant's Post-Hearing Exhibit 3 indicates that he has recently contacted each of his creditors and is working to resolve his debts. Concerning his student loan debt, he states that he is in the process of a loan consolidation to begin repayment and to remove the loan from default. He plans to pay \$200.00 monthly beginning October 1, 2013.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he has engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant denied the allegation set forth in the SOR under this guideline. Applicant completed a security clearance application dated February 6, 2012, and answered, "NO," to a series of questions concerning his finances. (Government Exhibit 7.) Question 26.(g) of the application asked the Applicant if in the last seven years he had bills or debts turned over to a collection agency? Question 26.(m) asked him if he has been over 180 days delinquent on any debts? Question 26.(n) asked if he is currently over 90 days delinquent on any debts? The Applicant answered, "NO," to each of the questions. (Government Exhibit 7.) These were false responses. He failed

to list any of the sixteen delinquent debts set forth in the SOR. (See Applicant's Answer to SOR.)

Applicant explained that he hurried through the security clearance application and did not obtain a copy of his credit report before completing the application. He knew he had delinquent debt and should have answered the questions correctly. He states that he did not intend to conceal this information from the Government.

Prior to this most recent security clearance application in February 2012, the Applicant had completed three others in January 1999, September 2009 and October 2011. (Government Exhibits 1, 3 and 6.)

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 obligation.

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.

Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified

information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Conditions that could raise a security concern:

16.(a) deliberate omission, concealment, or falsification of relevant facts from any personnel questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

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, dishonesty or conduct 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 regard to his personal conduct, given the circumstances, I believe that the Applicant intentionally or deliberately falsified his security clearance application or sought to conceal his financial history from the Government. He understood the importance of the document and had completed the application at least three other times before. (See Government Exhibits 1, 3 and 6.) He obviously hurried through the application and was careless in answering the questions. However, he knew he had delinquent debt and since he did not include any of it on the application the only reasonable conclusion is that he deliberately concealed the information from the Government on the application.

Under Guideline E, (Personal Conduct), Disqualifying Condition 16.(a) *deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status,*

determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities applies. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline E (Personal Conduct).

Furthermore, the Government has met its initial burden of proving that the Applicant has been financially irresponsible (Guideline F). The 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.

There is a several year history of financial indebtedness that has not been mitigated. Although the evidence shows that circumstances largely beyond his control started his financial problems, namely his separation and divorce coupled with periods of unemployment, he remains excessively indebted. Applicant has not started the process of resolving his debts and has a long way to go to demonstrate that he is fiscally responsible.

Applicant must show that he can and will resolve his debts. In this case, there is no evidence that he can do so. He has not shown an ability to pay all of his delinquent debts or live within his means. At this time, there is insufficient evidence of financial rehabilitation. Applicant has not demonstrated that he can properly handle his financial affairs.

Applicant has not met his burden of proving that he is worthy of a security clearance. Assuming that he continues to work to resolve his debts, and then shows that he has not acquired any new debt that he is unable to pay, he may be eligible for a security clearance in the future. However, not at this time. Considering all of the evidence, the 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. Mitigating 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, but is not controlling. There are simply too many delinquent debts that are not being addressed. Accordingly, I find against 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 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 financial indebtedness and his personal conduct and the effects it can have on his ability to safeguard classified information. On balance, it is concluded that the Applicant has not overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 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. through Subpara. 1.p:	Against the Applicant.
Paragraph 2:	Against the Applicant.
Subpara. 2.a.	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