



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



In the matter of:)	
)	
-----)	ISCR Case No. 12-10266
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Department Counsel
For Applicant: *Pro se*

January 22, 2015

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on June 4, 2012. (Government Exhibit 5.) On August 8, 2014, 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 in writing on September 8, 2014, in which he 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 the Applicant on or about October 24, 2014. The Applicant received the FORM on November 3, 2014. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. The Applicant submitted a reply to the FORM on November 25, 2014. This case was assigned to the undersigned on December 9, 2014. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 59 years old, and married with three adult children. He has a high school diploma. He is employed with a defense contractor as a Material Processor 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 admits the allegations set forth in subparagraphs 1.(a)., 1.(c)., 1.(e)., and 1.(f)., of the SOR under this guideline. He denies the allegation set forth in subparagraphs 1.(b)., 1.(d)., and 1.(g). (Government Exhibit 2.) Credit Reports of the Applicant dated June 7, 2012; and February 25, 2014, reflect that the Applicant is indebted to six separate creditors in an amount totaling in excess of \$50,393. (Government Exhibits 7 and 8.) Applicant has worked for his employer since April 1984.

Applicant fell behind on his bills, and accumulated debt that he could not afford to pay. He also admits that he has been unable to live within his means. (See Answer to SOR.) According to his credit reports, the following six debts remain outstanding: 1.(b), a judgment owed to a bank in the amount of \$9,618. Applicant has presented no evidence to show that he has paid the debt or anything otherwise. 1.(c), a mortgage account owed to a bank in the amount of \$34,124, was in foreclosure status with a total loan balance of \$126,905. The mortgage loan has now been foreclosed upon, a final judgment of \$155,689 has been entered, and a judicially ordered sale was scheduled for November 18, 2014. (Government Exhibit 11.) 1.(d), a debt owed to a creditor that was charged off in the amount of \$2,952. Applicant denies responsibility for the charge off on the theory that he is only a cosignor on the note. (Government Exhibit 4.) Applicant has presented no evidence showing that he is not liable for the debt. 1.(e), a debt owed to a creditor placed for collection in the amount of \$2,123; 1.(f) a debt owed to a creditor placed for collection in the amount of \$1,440; 1.(g), a debt owed to a creditor placed for collection in the amount of \$135. In his answer to the SOR, Applicant denied knowledge of the debt. However, in his responses to interrogatories, he states that he has contacted the creditor and is making payments. Applicant has provided no evidence showing that he is making payments toward the debt.

On February 25, 2014, Applicant filed for Chapter 13 Bankruptcy. His case was dismissed on June 14, 2014, because he failed to maintain timely payments under the plan set up by the trustee. (Government Exhibit 9.) Applicant explained that he hired the wrong attorney who told him that he would have a reduction in monthly payments when in actuality his payments increased.

Applicant stated that he has had a lot of troubles including family sickness and a number of out-of-state deaths. His explained that his daughter has crohn's disease. His mother, father, and two brothers passed away. His wife's mother, two brothers and one sister also passed away. Also aunts and uncles on both sides died. In addition, at some point his wife lost her job, and seriously injured her neck and back in a car accident. She has been in physical therapy and will need surgery. With only one household income, he states that it has been impossible for him to pay his debts.

Applicant has failed to submit any evidence beyond this to show that he has started making payments toward his debt or that he has resolved it. He has not produced a receipt or statement from a creditor confirming that any of his debt has been paid, or a settlement reached, a cancelled check, or a new credit bureau report showing final payment.

Applicant states that his intention is to pay off his delinquent debt. He also plans to contact his creditors to work out a payment plan. (Applicant's Response to FORM.) He has provided no documentary evidence showing that he has contacted his creditors about his situation, nor is there any evidence demonstrating that he has paid off anything, or that he has made any payments to reduce his debt or even that he has set up a payment plan. Puzzling also is the fact that as of August 2014 Applicant reported a positive net monthly remainder of \$1,740. (Government Exhibit 6.)

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 completed a security clearance application dated June 4, 2012, and answered, "NO," to a series of questions concerning his finances. (Government Exhibit 4.) Section 26 asked, "In the past seven years, have you had a judgement entered against you?" The Applicant answered, "NO," to the question. (Government Exhibit 5.) This was a false response. He failed to list the judgment against him set forth in 1.(b)., of the SOR. (See Applicant's Answer to SOR.)

Section 26 also asked, "In the past seven years, have you defaulted on any type of loan? Have you had bills or debts turned over to a collection agency? Has any account or creditor card been suspended, charged off, or cancelled for failing to pay as agreed? Have you been 120 days delinquent on any debt not previously entered? Are you currently over 120 days delinquent on any debt?" Following each question, Applicant was reminded to include financial obligations for which he was the sole debtor, as well as those for which he was a cosigner or guarantor. The Applicant answered, "NO," to the questions. These were false responses. He failed to list the judgment against him set forth in 1.(b)., and the delinquent debts set forth in 1.(c)., 1(d)., 1(g)., and 1.(e).

Applicant claims that at the time he completed the security clearance application in 2012, that he was unaware of the judgment against him in 2011. His response is not credible. The record evidence shows that Applicant was served with a summons on the matter in October 2010, that he entered into a stipulation in November 2011, and was served with interrogatories in the lawsuit in January 2012. (Government Exhibits 10 and 11.) Applicant should have disclosed the judgment in response to the question on the application. He further states that he did not disclose his other delinquent debts in response to the questions because he did not remember the debts or dates, and did not understand the questions. This response is not credible. The questions are not complicated or complex. Applicant knew or should have known to answer the questions truthfully and candidly, which he did not.

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 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 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; and

16.(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

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, Applicant was not truthful and candid with the Government on his security clearance application when he intentionally omitted relevant information concerning his finances. At the time he completed the application in 2012, he knew or should have known that he had a number of delinquent debts including the outstanding judgment in question. The only reasonable conclusion for not revealing the truth concerning his delinquent debts was that he did not want the Government to know

about them. There is no excuse for this misconduct. I find that he deliberately concealed the information from the Government on the application.

Since 2012, little has changed with respect to the Applicant's finances. He has not resolved his delinquent debts. There is nothing in the record that demonstrates any change in his financial habits. This type of misconduct is what the Government is trying to protect against by placing strict requirements on security clearance eligibility. Presently, Applicant remains excessively indebted, and his dishonesty has not been mitigated.

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*, and 16.(c) *credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgement, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information* apply. 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.

Applicant's history of financial indebtedness has also not been mitigated. He remains excessively indebted. He 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. 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 starts to resolve his delinquent 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 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* arguably applies, but is not controlling. Here, Applicant has failed to show that he has acted responsibly, when his monthly remainder is \$1,740, and he had made no payment on even the smallest of his debts. Here, 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.	Against the Applicant.
Subpara. 1.b.	Against the Applicant.
Subpara. 1.c.	Against the Applicant.
Subpara. 1.d.	Against the Applicant.
Subpara. 1.e.	Against the Applicant.
Subpara. 1.f.	Against the Applicant.
Subpara. 1.g.	Against the Applicant.
Paragraph 2:	Against the Applicant.
Subpara. 2.a.	Against the Applicant.
Subpara. 2.b.	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