



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 13-00298
)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Department Counsel
For Applicant: *Pro se*

January 27, 2014

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on March 11, 2013. (Government Exhibit 4.) On August 30, 2013, 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 23, 2013, 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 15, 2013. The Applicant received the FORM on October 26, 2013. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. The Applicant failed to submit a reply to the FORM. This case was assigned to the undersigned on December 30, 2013.

Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 51 years old and married with two adult children. He is employed with a defense contractor as a Security Guard 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 served in the United States Army from 1980 through 1983 receiving an honorable discharge. He has been employed as a security guard since August 2010. He admitted each of the allegations set forth under this guideline, except 1.e. Credit Reports of the Applicant dated October 21, 2011; and May 8, 2013, reflect that the Applicant is indebted to each of the creditors set forth in the SOR, in an amount totaling approximately \$13,000. (Government Exhibits 5 and 6.)

The Applicant has a history of financial problems as evidenced by his current delinquent debts. The record is lacking information as to the circumstances surrounding how or why the Applicant acquired his delinquent debts. Applicant stated that he is the sole provider for his household, and admits that he has neglected some things in order to maintain the household functions. (Government Exhibit 3.) He offered no further information regarding unemployment, underemployment, medical problems, divorce or any other applicable mitigation.

Based upon the Applicant's credit reports in the record, the following delinquent debts set forth in the SOR are outstanding:

1.a The Applicant is indebted to a bank for a delinquent mortgage account in the amount of \$8,618. Applicant's credit report dated October 21, 2011 indicates that in 2011 he received a loan modification, yet he has become delinquent again. (Government Exhibit 5.) Applicant indicates that he is attempting to obtain another loan modification and bring his mortgage to current status. (Government Exhibit 3.)

1.b. Applicant is indebted to a creditor for a delinquent account in the amount of \$1,022. (Government Exhibit 5.) Applicant indicates that the property in question, which may be a vacation time share, was sold and that he never received a notice of

sale or an ending balance. (Government Exhibit 3.) There is no proof of payment on this debt.

1.c. Applicant is indebted to a bank for student loan account placed for collections in the amount of \$2,625. (Government Exhibit 5.) Applicant claims that he paid this debt, but has provided no documentary evidence to support this payoff. (Government Exhibit 3.)

1.d. Applicant is indebted to a creditor for an account placed into collections in the amount of \$352. (Government Exhibit 5.) Applicant states that he plans to set up payment arrangements with the creditor and pay the debt. (Government Exhibit 3.)

1.e. Applicant is indebted to a creditor for an account placed into collections in the amount of \$85. Applicant states that he was not aware that he owed the creditor anything as he still maintains insurance on his home. Applicant plans to pay this debt. (Government Exhibit 3.)

1.f. Applicant is indebted to a creditor for an account placed into collections in the amount of \$54. Applicant states that he is trying to contact the creditor to determine which bill this pertains to and that he plans to pay this debt. (Government Exhibit 3.)

1.g. Applicant is indebted to a creditor for an account placed into collections in the amount of \$371. Applicant claims that he forgot the bill was due, but that he plans to make payments arrangements with the creditor. (Government Exhibit 3.)

1.h. Applicant is indebted to a creditor for a medical account placed into collections in the amount of \$118. Applicant indicates that this was a bill for his son's emergency room visit and that he plans to pay the debt immediately. (Government Exhibit 3.)

1.i. Applicant is indebted to a creditor for an account placed into collections in the amount of \$373. Applicant states that he needs to set up payment arrangements with the creditor. Applicant plans to pay this debt. (Government Exhibit 3.)

There is no evidence in the record to show that the Applicant paid off any of the delinquent debts set forth in the SOR. Furthermore, he has failed to submit any documentary evidence to demonstrate that he has even set up payment arrangements with any of his creditors. There are no receipts or proof of payments. There is insufficient evidence in the record to show what, if anything, has been done.

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 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’s delinquent debts remain outstanding. Namely, his delinquent home mortgage, the largest of his delinquent debts, and the other smaller delinquent accounts, which together total in excess of \$13,000, have not been resolved. If they have been resolved, he has failed to provide proof of such. Furthermore, the record is also lacking any evidence concerning the conditions that

resulted in his financial problems. Applicant has failed to provide proof of payment, receipts or any documentation to support his statements concerning the reduction of his delinquent debts. Without more, the Applicant has failed to establish that he is fiscally responsible. There is no evidence that the Applicant has received financial counseling, nor is there any indication that his financial problem is under control.

Under the particular circumstances of this case, the 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. There is inadequate evidence in the record that he has paid even one of his delinquent debts. The 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 works to resolve his delinquent debts and provides documentary proof of his efforts, 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, he is not eligible 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. 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 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 the effects that 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 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.: 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.
Subpara. 1.h.: Against the Applicant.
Subpara. 1.i.: 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