



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 13-00370
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Department Counsel
For Applicant: *Pro se*

December 13, 2013

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on March 11, 2011. (Government Exhibit 3.) On April 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 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.

The Applicant responded to the SOR in writing on May 13, 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 September 11, 2013. The Applicant received the FORM on September 25, 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 November 26, 2013. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 58 years old and married. He is employed with a defense contractor as a Proposal Analyst 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 twelve delinquent debts set forth in the SOR under this guideline. (See Applicant's Answer to SOR). Credit Reports of the Applicant dated July 15, 2013; March 4, 2013; and March 22, 2011, reflect that the Applicant is indebted to each of these creditors in an amount totaling at least \$40,000. (Government Exhibits 6, 7 and 8.) Most of the debts are delinquent credit card accounts. Applicant has been working for his current employer since January 1982.

Applicant attributes his financial indebtedness to events beyond his control. His mother passed away, his wife lost her job, and his son moved out. He indicated that each of these individuals had been contributing to the household income, and when the loss of these three incomes occurred, it made it impossible for him to pay the bills. (Government Exhibit 5.) Applicant did not provide any supporting documentation to substantiate these events or situation.

Applicant claims that he has settled four of the twelve delinquent debts. He asserts that allegation 1(a)., a judgment filed in September 2010 in the amount of \$11,086 has been paid. However, he submitted a copy of the unpaid judgment as supporting evidence. There is no evidence of any payments made to resolve this debt. This falls short of proving the debt has been resolved. Furthermore, Government Exhibit 6, also reflects that it remains unpaid. I find this debt to remain owing.

Applicant also asserts that allegation 1(b)., a debt in the amount of \$7,301 has been paid. However, as proof of payment, he submitted a copy of the purported settlement check written from his daughter's checking account and not his own. He provided no other documentary evidence of contacts or payments between October 2009 and the date of payment in April 2013. Since it is possible that he borrowed money from his daughter or that she may have owed him money, I find this debt to be resolved.

Allegation 1(h)., a debt in the amount of \$107 has been paid. Applicant submitted a document indicating that the debt was paid on May 6, 2013. (Government Exhibit 2.) Allegation 1(j)., a debt in the amount of \$10,625 has been paid. Applicant

submitted a letter from the creditor indicating that the debt was settled in March 2011. (Government Exhibit 2.) As indicated above, I find that only three of the four debts he claims have been paid were resolved. Allegation 1(a) remains outstanding.

The following eight delinquent debts remain owing and unpaid. According to Government Exhibit 6 the account set forth in allegation 1(a)., has been delinquent since at least May 2012 and remains unpaid. Allegation 1(c)., a debt for an account in the amount of \$2,199 remains outstanding. Government Exhibit 6 reflects two delinquent debts and an unpaid judgment owed to the creditor. Allegation 1(d)., a debt owed to a creditor in the amount of \$1,126 is outstanding. Allegation 1(e)., a debt owed to a creditor in the amount of \$597 is outstanding. Allegation 1(f)., a debt owed to a creditor in the amount of \$1,074 is outstanding. Allegation 1(g)., a debt owed to a creditor in the amount of \$1,037 is outstanding. Allegation 1(i)., a debt owed to a creditor in the amount of \$2,103 is outstanding. Allegation 1(k)., a debt owed to a creditor in the amount of \$2,102 is outstanding. Allegation 1(l)., a debt owed to a creditor in the amount of \$795 is outstanding. There is no documentary evidence of any payments made to resolve the above debts.

Applicant provided no documentary evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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). 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 little evidence in the record that shows that the Applicant has resolved his excessive indebtedness. Only three of his debts have been resolved, the other nine remain outstanding and excessive. There is no evidence of any payment plans being established or any other attempts to resolve his debts. Although his statement to the investigator during his security clearance background investigation confirmed that he would be working to resolve his debts, there is no evidence of the sort. Presently, he remains excessively indebted and his financial situation remains dismal.

The Applicant has done little to show that he is fiscally responsible. It does not appear that he understands the importance of paying his bills on time or it may possibly be that he simply does not have the financial resources to address his debts. In any case, there is insufficient evidence of financial rehabilitation. The Applicant has not demonstrated that he can properly handle his financial affairs or that he is fiscally responsible.

Under the particular circumstances of this case, the Applicant has not met his burden of proving that he is worthy of a security clearance. 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. Assuming that he begins 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. None of the Mitigation 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.:	For 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.:	For the Applicant.
Subpara. 1.i.:	Against the Applicant.
Subpara. 1.j.:	For the Applicant.
Subpara. 1.k.:	Against the Applicant.
Subpara. 1.l.:	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