



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 13-01241
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)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Department Counsel
For Applicant: *Pro se*

October 10, 2014

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIPs) on June 19, 2003, and March 12, 2010. (Government Exhibits 1 and 2.) On April 17, 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 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 the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR on May 19, 2014, and he requested a hearing before a Defense Office of Hearings and Appeals (DOHA) Administrative Judge. This case was assigned to this Administrative Judge on August 13, 2014. A notice of hearing was issued September 2, 2014, and the hearing was scheduled by video-conference for September 19, 2014. At the hearing the Government presented 9 exhibits, referred to as Government Exhibits 1 through 9. The Applicant presented 8 exhibits, referred to as Applicant's Exhibits A through H. He also testified on his own behalf. Applicant requested that the record remain open in order to submit additional

documentation. The record remained open until close of business on September 26, 2014. Applicant submitted four Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits 1 through 4. The official transcript (Tr.) was received on October 1, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 38 years old and is married with six children. He has a Master's degree in Astronomical Engineering. He is employed with a defense contractor as a Flight Test Engineer and 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.

There are 67 delinquent debts set forth in the SOR totaling in excess of \$100,000. Applicant admitted each of the allegations set forth in the SOR under this guideline, except 1.b., 1.d., 1.e., 1.g., 1.k., 1.l., 1.m., 1.n., 1.o., 1.p., 1.q., 1.v., 1.w., 1.z., 1.aa., 1.ll., 1.oo., 1.pp., 1.rr., 1.uu., 1.vv., 1.aaa., 1.ccc., 1.ddd., 1.eee., 1.ggg., 1.nnn., and 1.ppp. Of the debts he denied, he is either disputing the debt; it was deleted from the credit file and no longer reflected on his Transunion credit report; it has been charged off; it has been paid; or he has no knowledge of it. Credit reports of the Applicant dated March 23, 2010; May 6, 2013; July 19, 2013; December 19, 2013; and July 30, 2014, which include all three credit reporting agencies, reflect that he is indebted to each of the creditors set forth in the SOR in an amount totaling in excess of \$100,000. (Government Exhibits 3, 4, 5, 6 and 7.) The debts include pest control services; postal services; cell phone services; cable television services; credit card debt; water services; storage container services; private school tuition; and vehicle repossessions, among other things.

After graduating from college, Applicant served in the United States Air Force from 1999 to 2007, and separated as a Captain. He began working for his current employer in July 2007. He has held a security clearance for the past twelve years. His wife is a stay at home mother, but she occasionally does free lance work as an interior designer.

Applicant has a history of financial problems as evidenced by his current delinquent debts. A DOHA hearing was conducted two and a half years ago on April 12, 2012, concerning his past delinquent debts, which at that time amounted to about

\$70,000. (See Government Exhibit 9.) Applicant testified at that time that he had hired a debt consolidation service to assist him in resolving his delinquent debts. He indicated at that time that he was making monthly payments of \$800, in order to address his past due debt. The Administrative Judge based his decision on the fact that the Applicant was addressing his delinquent debts. Applicant's security clearance was granted.

Since then, Applicant's indebtedness has continued to increase. A close look at his credit reports from all three of his credit reporting agencies show that over that past two and a half years, his indebtedness has grown and is now closer to \$100,000. Applicant testified that the \$800 payments that were arranged to pay the delinquent debts in his earlier DOHA hearing were scheduled to start shortly after the hearing. He was not able to execute on the program because the payment was too large. The company would not negotiate a smaller payment and he no longer uses their services. (Tr. pp. 57-58.) Some of those delinquent debts are still owing.

Several occurrences originally contributed to Applicant's financial situation. In 2008, he and his wife opened their own business, a high-end children's clothing store. He used \$21,000 from his retirement account and money borrowed from family members to finance the business. The store had some success and they decided to open a second store. In 2010, their daughter was born who was diagnosed with Down Syndrome and suffered from pulmonary hypertension at birth that required multiple hospitalizations and time missed from work. With the combination of slumping sales, the bad economy, high operating expenses, and his family issues, by 2010, he was forced to close both stores. At that time, Applicant was struggling to make his mortgage payments on his real property, which at that time included his primary residence and a rental. Since then, both properties were foreclosed upon. Applicant also had two vehicles repossessed. (Tr. p. 91.) In 2012 and 2013, Applicant's daughter continued to need specialized care for her medical condition. This required the expense of out-of-town travel to a specialist, and the cost of medications. By this time he and his wife had more children for a total of six children.

A history of poor financial decisions also contributed to Applicant's situation. In April 2013, he used his work credit card for personal use in violation of his employer's policy. He explained that he, his wife, and his children went to San Francisco for the original purpose of seeking medical care for his daughter with Down Syndrome. He had to extend his stay for unexpected medical issues related to his wife's pregnancy. He could not afford to pay for the hotel with his personal credit card as he did not have the funds available. (Tr. p. 106.) Instead, he used his corporate credit card to pay the bill that totaled in excess of \$9,000. He knew that it was against company policy to do so. He did not report his corporate credit card use to his company until he found it difficult to pay off the debt. He has since paid off the debt and he no longer has a corporate credit card. (Tr.p. 107, and Applicant's Exhibit E.)

In regard to allegation 1.uu., Applicant received an IRS Form 1099-C, Cancellation of Debt from the creditor in the amount of \$12,998. This debt has been

forgiven by the creditor, but will be included as income for tax purposes. Applicant testified that he filed for an extension to file his 2013 state and federal income tax returns, and has not filed his returns yet.

With all of his indebtedness, in February 2014 Applicant purchased a Porshe Panamera for his wife with monthly payments of \$1,697. He currently owes approximately \$55,475 on the loan. (Tr. pp. 95-98.)

Applicant testified that he has enrolled in credit monitoring through Transunion. They have provided him with a resolution summary showing some of his delinquent debts that have been deleted from his credit report for various reasons. (Applicant's Exhibit A.) He explained that he is visiting the site often to monitor for any new or incorrect information and trying to pay off the things that are still outstanding. It is his full intention to be debt free at some point. (Tr. pp. 55-56.) He provided proof of payment for one debt he claims was in the amount of \$212. (Applicant's Exhibit H.) He also claims that a debt in the amount of \$67.91 was paid. (Applicant's Exhibit B.)

Applicant's personal financial statement dated September 19, 2014, indicates that he currently earns \$126,000 annually. (Applicant's Exhibit G.) In his financial statement he listed the delinquent debts that are reflected in his Transunion credit report as owing and delinquent. He believes that his delinquent debt totals \$67,964. (Tr.p. 60.) He failed to consider the other two credit reporting agencies that include other delinquent creditors not listed on his Transunion report. (Applicant Exhibit G.) His checking account, as of the hearing, was negative \$1,700. His savings account had between \$300 and \$400. His retirement account contained about \$74,000. After paying his regular monthly expenses, he has about \$300 left at the end of the month. (Tr. p. 109.) Applicant has received no financial counseling. (Tr. p. 112.)

Applicant testified that his children are now healthy and there are no new individuals coming into the household. He stated "But fundamentally my focus now is on kind of completing the recovery and kind of turning the situation around with regards to my credit rating, trying to do things to build credit, and do things to satisfy these debts that are out there." (Tr. pp. 54-55.)

Applicant's Post-Hearing Exhibit 1 is a copy of his 2013 year-end paystub. He contends that a court-ordered garnishment of his wages occurred between March 2013 and September 2013, for \$19,418. During that seven month garnishment period he was unable to pay any of his other debts.

On September 23, 2014, Applicant enrolled with a debt counseling program that a set up a debt-repayment program compliant with his family budget. The monthly payments are \$580 for 48 months for a total of \$38,881. Applicant's total unsecured debt was calculated as \$44,630. This program addresses only debts exceeding \$500 in value. The Applicant plans to address those debts less than \$500 one at a time. (Applicant's Post-Hearing Exhibit 2.)

Through the counseling credit snapshot, recommendations were made to the Applicant on how to could adjust his budget to improve his financial posture moving forward. The money he spends on food, household and transportation must be reduced to accommodate his debt repayment program. (Applicant's Post-Hearing Exhibit 3.)

Applicant has prepared a new budget going forward in order to comply with the counseling and debt management program that he now plans to start. (Applicant's Post-Hearing Exhibit 4.)

Applicant's work performance rating history from January 1, 2007, through February 22, 2014, reflect favorable ratings. He also received several awards including a Team Accomplishment Award, and an Excellence Award, and other perks. (Applicant's Exhibit F.)

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.

Condition 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.

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 have not been paid. His failed business venture, his daughter's illness, and the expense involved in supporting six children, obviously contributed to some of his financial indebtedness, however, these occurrences did not cause all of his debt. Applicant has made a series of poor decisions that have negatively effected his finances. Furthermore, by spending money he cannot afford to spend, without addressing his delinquent debts, he has demonstrated that he cannot live within his means. For example, when he could not afford to pay for it himself, he used his corporate credit card to pay for hotel expenses for his family. He recently purchased a very expensive car for his wife, without consideration for his delinquent debts. This lavish spending under the circumstances shows irresponsibility. At this point, he remains excessively indebted and he has not demonstrated that he has done much of anything to resolve his problems.

Applicant's history of excessive indebtedness, without sufficient mitigation, demonstrates a pattern of unreliability and poor judgment. Applicant failed to provide proof of payment, receipts, or any documentation to demonstrate that he resolved his delinquent debts. There is nothing in the record to show that Applicant can live within his means. Without more, the Applicant has failed to establish that he is fiscally responsible. Furthermore, there is no evidence that he has received credit counseling to help him set a budget and learn to live within it, or that his finances are under control.

Applicant's Post-Hearing Exhibits 2, 3 and 4, attempt to show that he has, since the hearing, enrolled in a debt-counseling program and has set up a payment plan that he intends to follow. There is no guarantee that the Applicant will be able to follow this arrangement. He did not follow the first payment plan in 2012, and because of that, there is little likelihood that he will follow this one. In this case, his actions are simply too little, too late.

Under the particular circumstances of this case, 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. 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 demonstrates a history and pattern of fiscal responsibility, including the fact he has not acquired any new debt that he is unable to pay, he may be eligible for a security clearance sometime in the future. However, he is not eligible now. Considering all of the evidence, 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. It can be argued that Mitigation 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, because of his failed business and his daughter's illness. However, this mitigation condition is not controlling. Applicant did not act responsibly under the circumstances. He continued to spend money he did not have, and has still not set up any payment plans to resolve these debts. Applicant could benefit from intense financial counseling. In this case, 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 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 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 not 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 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a. through 1.z. Against the Applicant.

Subpara. 1.aa. thorough 1.zz. Against the Applicant.

Subpara. 1.aaa through 1.ppp. 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