



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-02989

Appearances

For Government: Jeff A. Nagel, 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) October 31, 2013. (Government Exhibits 1.) On August 15, 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 September 15, 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 October 27, 2014. A notice of hearing was issued that same day, and the hearing was scheduled for December 5, 2014. At the hearing the Government presented seven exhibits, referred to as Government Exhibits 1 through 7. The Applicant presented four exhibits, referred to as Applicant's Exhibits A through D. He called two witnesses, and 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 December 26, 2014. Applicant did not submit any additional documentation. The official transcript (Tr.) was received on December 15, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 39 years old, has primary physical custody of his two daughters and lives with his girlfriend and her two sons. He has an Associate's Degree in Network Engineering. He is employed with a defense contractor as a Software Developer 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 nineteen delinquent debts set forth in the SOR totaling in excess of \$55,000. Applicant admitted each of the allegations set forth in the SOR under this guideline, except 1(h), 1(j), 1(l), 1(m), 1(n), 1(o), 1(r), and 1(s). Of the debts he denied, he believes that he has either paid them or has no knowledge of the debt. Applicant's credit reports dated June 13, 2007; December 11, 2013; June 27, 2014; October 20, 2014; and November 29, 2014, which include information from all three credit reporting agencies, reflect that he is indebted to each of the creditors set forth in the SOR. (Government Exhibits 3, 4, 5, 6, and 7.) The debts include medical accounts, cable television accounts, a jewelry account, a repossessed vehicle, towing service charges, and various other bank credit cards.

Applicant served on active duty in the United States Marine Corps from October 1993 to October 1997. During his military career, he received a number of awards, decorations and commendations for his service including a Good Conduct Medal, the National Defense Service Medal and a Humanitarian Service Medal. (Applicant's Exhibit A).

Applicant explained that he has been married and divorced twice. His financial problems began for a second time in about 2007, when he tried to refinance his home. Prior to purchasing his home in 2005, he had bad credit. He worked hard to resolve his delinquent debts in order to qualify to purchase his house. When he purchased the house in 2005, he obtained an onerous mortgage. His plan was to later refinance the house, pull equity out and pay his bills. Once the bills were paid, his credit report would show that he was debt free and his credit rating would improve. It was about this time

that the economy took a downturn and the recession started. Applicant tried, but was unable get his house to appraise at a value that would allow him to refinance. As a result, he could no longer afford to make his house payments and was forced to short sale his home in 2008. Applicant also became delinquent to each of the creditors set forth in the SOR.

Applicant has worked for his current employer since October 2013. He has held a security clearance since 2008. Applicant currently earns about \$114,000 annually, and his girlfriend with whom he lives and shares the expenses earns almost \$50,000. Applicant states that he is current with all of his regular monthly expenses. It is only his past due indebtedness that presents a problem.

Applicant explained that for the past two years he has been working toward resolving his delinquent debts. (Tr. p. 78.) He claims that he has paid off three of the nineteen, the debt set forth in 1(h)., for \$74; the debt in 1(n)., for \$2,489; and the debt in 1(r)., for \$235. Applicant submitted a credit report to show that he has made some progress toward paying his debts. (Applicant's Exhibit D.) Although he did not provide direct proof of payment, I find that these three debts have been satisfied. He testified that he is going to look into hiring a credit repair service when he has enough money to afford it. He explained that he has resisted filing bankruptcy as he wants to pay his debts. He stated that, "Despite earning a good salary, my financial recovery has taken longer than I'd like with my disposable income shrinking due to the high interest rates on financed vehicles and my reluctance to apply for additional credit." (Tr. pp. 35-36.)

Letters of recommendation from two Government Managers with whom the Applicant closely works indicate that in their opinion, Applicant is reliable, responsible, organized, a hard worker and top performer, who is committed to his job. He is recommended for a security clearance. (Applicant's Exhibits C and D.)

Two witnesses testified on behalf of the Applicant. His manager, who hired him a year ago, works with him on a daily basis, provides his performance evaluations, and trusts him inherently, even to the point of obtaining his opinion on new hires. The other witness is a technical director, who has worked as the Applicant's supervisor and who is now in a consulting position with the Applicant. Both individuals consider the Applicant to be extremely trustworthy and reliable. Applicant was described as a man of integrity who is forthright, honest, valuable, and highly respected by his superiors. His performance evaluations reflect that he "fully exceeds" or "exceeds" the requirements of his job in every category. He is recommended for a security clearance. (Tr. pp. 85-93)

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 resolved three of the nineteen delinquent debts. He has sixteen debts that remain outstanding.

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.

Under the particular circumstances of this case, Applicant has not met his burden of proving that he is worthy of a security clearance. He has resolved only three of his delinquent debts and has done nothing to address the others. 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. 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 two divorces and poor real estate investment. However, this mitigating 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.s.	Against the Applicant.
Subparas. 1.h., 1.n., and 1.r.	For 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