



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-01231

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Catie E. Young, Attorney At Law, Griffith, Young and Lass

November 7, 2014

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaire for Investigations Processing (E-QIP) on September 19, 2013. (Government Exhibit 1.) On May 13, 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 July 22, 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 September 16, 2014, and a notice of hearing was issued that same day, scheduling the hearing for October 2, 2014. At the hearing the Government presented three exhibits, referred to as Government Exhibits 1 through 3. The Applicant presented thirty-two exhibits, referred to as Applicant's Exhibits A through FF. 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 October 16, 2014. Applicant submitted three Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits GG through II. The official transcript (Tr.) was received on October 14, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 55 years old and is married. He has a Bachelor's Degree in Computer Science. He is employed with a defense contractor as a Software 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.

Applicant admitted allegations 1.(a), and 1.(b), set forth in the SOR under this guideline. He denied the remaining allegations. Credit reports of the Applicant dated October 10, 2013, and September 4, 2014, reflect that he is or has been indebted to each of the creditors set forth in the SOR in an amount totaling in excess of \$300,000. (Government Exhibits 2 and 3.) The facts of this case are somewhat confusing, however the gist of Applicant's argument is that a series of unexpected and unfortunate circumstances caused his excessive financial indebtedness.

After graduating from college in 1981, he began working for a defense contractor. In late 1993, Applicant began his own software company, known as "A"; a sole proprietorship, specializing in F15 Radar. Due to his specific skill set, he was able to secure several contracts programming the radar. This company was in business until 2000. Applicant also began another company in the 1990's, known as "B"; an internet service company that provided internet dial-up, web hosting, and e-mail to certain areas. He was later able to expand, providing nation-wide services. In 2000, he merged the two companies and created another company known as "AB". Due to budget cuts within Government, Applicant had to move into other areas of providing software services.

In about 2006, the Government preferred to use another company, and "AB" lost the contact. Applicant was offered employment with the other company, and eventually accepted an offer and began employment as a sub-contractor. In 2007, the company approached Applicant and told him that he was being paid too much, and so they converted the sub-contract back to him being an employee for the company. Applicant took the job, but went on a pre-planned vacation, against their desire. Two days after

returning to work, Applicant was fired, and not given a reason. From January through August 2008, Applicant was unemployed. This period of unemployment took a toll on Applicant's finances.

It was also about this time that Applicant signed a two year lease agreement with an individual who agreed to buy his primary residence after 2 years for \$140,000. (Applicant's Exhibit AA.) Applicant and his wife moved into a rental. At some point, the person who was leasing Applicant's property left town without notice, and left the house in shambles. As a result, Applicant lost his homeowners insurance. The lender double charged him for force-placed insurance. The house was eventually foreclosed upon.

Applicant also discussed another business opportunity with the bank. Applicant testified that the bank advised that he should finance the venture with a credit card secured by insurance in the unlikely event the business failed. It was not long after the opening of the business that Applicant had a falling out with his partners. He was locked out of the building, and could not continue the business operations. Applicant states that he notified the bank, but was told that this was not considered a business interruption, and was refused insurance coverage.

By 2008, Applicant could not keep up with maintaining both the business debt and his personal expenses. He defaulted on the business credit cards. The bank subsequently levied his personal checking and savings accounts. The bank sold the majority of the debt to collection agencies, and filed a civil lawsuit against the Applicant for the remaining debt.

Throughout the hearing, Applicant continued to argue that he is not legally responsible for debt incurred by his corporation, since he did not personally guarantee any of the loans that were taken out in the name of the corporation. The question then becomes which debts are his, and which are the corporation's. Credit reports of the Applicant reflect each of the delinquent debts set forth in the SOR, which demonstrates that the lender or creditor is holding the Applicant responsible for the debt. Since litigation is still pending on the issue, Applicant and his counsel were unable to specifically identify which debts were Applicant's personal responsibility, and which were not. Accordingly, I will consider the delinquent debts that are in dispute to be the Applicant's responsibility.

a. Applicant became indebted to a mortgage lender, on a mortgage account, that was past due in the approximate amount of \$15,336. The account was in foreclosure status with a total loan balance of \$96,925. This was the loan on the Applicant's primary residence. Applicant claims that the property was sold for \$117,413.86, and that the lender is issuing a letter that reflects an account with a zero balance. (Applicant's Exhibits B and C.)

b. Applicant was indebted to a lender for an account that had been placed for collection in the approximate amount of \$47,918. Applicant states that he entered into a repayment agreement, for \$24,000, that he is paying off on a monthly basis through

incremental monthly payments. A letter from the creditor dated May 29, 2014 indicates that at that time, he was current with the payments on his settlement agreement. (Applicant's Exhibit D.)

c. Applicant was indebted to a bank for an account that had been placed for collection in the approximate amount of \$40,397. Applicant contends that the bank discharged the debt on December 31, 2013. Applicant received an IRS Form 1099-C, Cancellation of Debt from the creditor. (Applicant's Exhibit E.) He also contends that he filed a Statement of Insolvency with the IRS. Despite the general rule requiring inclusion of a canceled debt as gross income, if prior to cancellation, the taxpayer is insolvent, exclusion of the canceled debt is proper. (See, Internal Revenue Service Code Section 108(a)(1)(b), referenced in letter from Applicant's CPA, Post-Hearing Exhibit GG.)

d. Applicant is indebted to an insurance company for an account that had been placed for collection in the approximate amount of \$14,087. Applicant is disputing the debt. Applicant explained that his interest rate increased from 9.9% to 29.99% because he was delinquent on his bank debt. The insurance company filed a civil lawsuit against the Applicant that is currently in litigation. (Applicant's Exhibit F.) The debt remains outstanding.

e. Applicant was indebted to a bank for an account that has been placed for collection in the approximate amount of \$8,726. Applicant contends that the bank discharged the debt on December 31, 2013. Applicant received an IRS Form 1099-C, Cancellation of Debt from the creditor. (Applicant's Exhibit E.) He also contends that he filed a Statement of Insolvency with the IRS. Despite the general rule requiring inclusion of a canceled debt as gross income, if prior to cancellation, the taxpayer is insolvent, exclusion of the canceled debt is proper. (See, Internal Revenue Service Code Section 108(a)(1)(b), referenced in letter from Applicant's CPA, Post-Hearing Exhibit GG.)

f. Applicant is indebted to a lender for an account that is 120 days or more past due in the approximate amount of \$811 with a balance owed of approximately \$5,445. Applicant contends that the debt was incurred by his business known as AB, which he did not personally guarantee. Applicant is disputing the debt, but if found to be liable for it, he states that he will pay it in full. The debt remains outstanding.

g. Applicant was indebted to a bank for an account that has been placed for collection in the approximate amount of \$2,183. Applicant contends that this is his wife's debt. Applicant's wife was diagnosed with dissociative disorder, which he describes as sort of like multiple personality disorder. She sees a psychiatrist and therapist. He believes she opened the credit card to use to pay for her medical expenses. (Tr. p. 87.) The bank filed a lawsuit against his wife for repayment of the debt. (Applicant's Exhibit I.) It appears that the debt has now been paid in full. (Applicant's Exhibit J.)

h. Applicant is indebted to a bank for an account that has been placed for collection in the approximate amount of \$7,070. Applicant contends that this account is his wife's debt. The bank filed a lawsuit against his wife for repayment of the debt. Applicant is disputing the debt, but if found to be liable for it, he will pay it in full. (Applicant's Exhibits L and K.) The debt remains outstanding.

i. Applicant was indebted to a bank for an account that has been placed for collection in the approximate amount of \$6,159. Applicant contends that this debt is his wife's debt. He states that his wife has settled the account, and agreed to a repayment plan. (Applicant's Exhibit M.) The repayment plan is \$67.50 monthly for a total of approximately \$2,900. (Applicant's Exhibit N.) Applicant contends that he is current on the payments.

j. Applicant is indebted to a bank for an account that has been placed for collection in the approximate amount of \$40,111. Applicant contends that this debt is a duplicate of the debt set forth in allegation 1 (b). (See, Tr. p. 94, and Applicant's Exhibit D.)

k. Applicant is indebted to a lender for an account that has been placed for collection by a bank in the amount of \$13,534. Applicant disputes the debt, and contends that he did not personally guarantee it, as it was a business debt. (Applicant's Exhibit P.) If it is determined that he owes the debt, he will pay it. The debt remains outstanding.

Applicant's personal financial statement indicates that after paying his regular monthly expenses and the few debts he lists, he has a net remainder of \$284 left at the end of the month. (Applicant's Exhibit Q.) In May 2014, Applicant sought out some investment and financial counseling to help organize and improve his financial situation. A comprehensive financial plan was prepared by a financial counseling service. (Applicant's Exhibit BB and FF.) Applicant's bank account for the period from June through September 2014, reflects that he is paying his current bills. (Applicant's Exhibits CC and DD.) He is also current with his active credit cards. (Applicant's Exhibits I, Z, and EE.)

Letters of recommendation were submitted on behalf of the Applicant from professional associates and friends, including a Project Manager, Systems Administrator, a Software Engineer, a retired Air Force colonel, a church director, and a registered nurse, who have known the Applicant for many years. Applicant is described as very intelligent, professional, helpful, honest, and driven. His job performance exceeds normal expectations. He has a high degree of integrity, and is extremely dependable. He is considered to be an asset to the company, and is highly recommended for a security clearance. (Applicant's Exhibits R, F, S, T, U, V, W, and X.)

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;
- 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 behavioral 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 adjudication 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 a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence that 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 a significant amount of Applicant's delinquent debts remain owing. They are in dispute, and have not been paid or resolved, and he has no means of resolving them. His failed business venture, and periods of unemployment and underemployment, 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 affected his finances. In addition to losing his house in foreclosure, Applicant used credit cards to finance his living expenses which further increased his indebtedness. From a cursory review, it appears that Applicant has paid many of his delinquent debts, when he actually has not. For example, two of his debts were cancelled by the creditor. Applicant is not paying his income taxes for the debt forgiveness because he claims that he is insolvent. Two other debts listed in the SOR, he claims are his wife's. Applicant's wife does not work and has no independent source of income separate from Applicant's. In regard to the debts that he claims are in dispute, but will pay if found liable, he has no financial resources to do so. He remains excessively indebted and he has not demonstrated that he can or will do much of anything to resolve his problems. Even Applicant's recent personal financial statement indicates that, after paying his regular monthly expenses, he has about \$250 left at the end of the month. Although his intentions are good, he has no means to pay his delinquent debt, since he is insolvent.

Applicant's history of excessive indebtedness, without sufficient mitigation, demonstrates a pattern of unreliability and poor judgment. Applicant is simply unable to pay his delinquent debts. Without more, the Applicant has failed to establish that he is fiscally responsible. Furthermore, although there is some evidence of financial counseling, it is uncertain what, if anything, he has learned from the course.

Under the particular circumstances of this case, Applicant has not met his burden of proving that he is worthy of a security clearance. His financial affairs are in such disarray, he does not have a concrete understanding of his financial responsibilities, and he 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 to demonstrate 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 periods of unemployment, and underemployment. 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 at this point does not have the finances available to pay his 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 judgment, 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 E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1:	Against the Applicant.
Subpara. 1.a.	For 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.	For the Applicant.
Subpara. 1.h.	Against the Applicant.
Subpara. 1.i.	For the Applicant.
Subpara. 1.j.	For the Applicant.
Subpara. 1.k.	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