



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 14-01833
)
)
Applicant for Security Clearance)

Appearances

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

May 12, 2015

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) January 24, 2013. (Government Exhibit 3.) On June 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 in writing on July 16, 2014, and 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 Applicant on January 6, 2015. Applicant received the FORM on January 13, 2015. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant did not submit a response to the FORM. This case was assigned to the undersigned on March 9, 2015. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 43 years old, and married with one adult daughter. He has a high school diploma. He is employed with a defense contractor as a Test & Development Mechanic and is seeking to obtain a security clearance in connection with his 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 served in the United States Navy from August 1998 to October 2011, receiving an honorable discharge. From November 2011 to September 2012, he was unemployed. Since September 2012, Applicant has been employed full-time with his current employer.

Applicant has a recent history of financial indebtedness. There are five delinquent debts set forth in the SOR totaling in excess of \$102,000. Applicant admitted each of the allegations set forth in the SOR under this guideline. Credit reports of the Applicant dated October 8, 2014; January 31, 2013; and March 6, 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 6, 7 and 8.) The debts include 1.a., a debt owed to a creditor in the amount of \$4,138; 1.b., a debt owed to a mortgage company in the amount of \$72,410; 1.c., a debt owed to a creditor in the amount of \$879; 1.d., a debt owed to a creditor in the amount of \$9,907; and, 1.e., a debt owed to a creditor in the amount of \$3,037.

All of his debts, except one, became delinquent after he became employed. His background investigation reveals that the debt owed in 1.a., in the amount of \$4,138, has been delinquent since March 2010. In regard to the debt owed in 1.b., it has been delinquent since July 2010. Applicant indicates that he applied for a loan modification, however, he has provided no documentation to substantiate this claim. The debt owing in 1.c., has been delinquent since February 2010. As to the debt owing in 1.d., it has been delinquent since May 2012. A debt owing in 1.e., has been delinquent since February 2010. Applicant claims that the debts set forth in 1.a., and 1.e., are identical, he has provided no documentary evidence to establish that these two accounts concern the same debt.

Applicant provides no further explanation for his indebtedness. He provides no explanation with respect to the final disposition of these debts nor any supporting documentation that any of them have been resolved. It may be that the foreclosure of the Applicant's property satisfied the debts owed to the lenders on the property, but

there is no evidence to support this contention. Without more, Applicant is still held responsible for the debts.

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:

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.

Obviously, Applicant's eight or nine months of unemployment caused some of his financial hardship. Also, transitioning his lifestyle on military pay to civilian pay may have created some difficulties. However, since leaving the military, he has been gainfully employed for the past three years. The evidence shows that Applicant remains delinquently indebted to each of the five creditors set forth in the SOR. There is no evidence of even an attempt to pay the smallest of the debts, which is \$879. In the absence of documentary evidence submitted in response to this FORM to show that Applicant has been able to attain some resolution on his delinquent debts and establish a track record of debt repayment, this concern must be decided against him in evaluating his suitability to have access to classified information.

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 has, can, or will resolve 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 not sufficiently addressed the delinquent debts in the SOR and therefore, he does not have a concrete understanding of his financial responsibilities. 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. There is no evidence in the record to show that Applicant has done anything to resolve his debts. In fact, from what is presented, 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.	AGAINST Applicant.
Subparas.	1.b.	AGAINST Applicant.
Subpara.	1.c.	AGAINST Applicant.
Subparas.	1.d.	AGAINST Applicant.
Subpara.	1.e.	AGAINST 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