



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-07063

Appearances

For Government: Andrew H. Henderson, Department Counsel

For Applicant: *Pro se*

February 2, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on May 31, 2012. (Government Exhibit 1.) On July 7, 2015, 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 DOHA 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 31, 2015, and he requested a hearing before a Defense Office of Hearings and Appeals Administrative Judge. This case was assigned to this Administrative Judge on October 15, 2015. A notice of hearing was issued on October 21, 2015, scheduling the hearing for November 18, 2015. At the hearing the Government presented six exhibits, referred to as Government Exhibit 1 through 6, which were admitted without objection. The Applicant presented four exhibits, referred to as Applicant's Exhibits A through D, which were admitted without objection. He testified on his own behalf. The record remained open until close of business on November 25, 2015, to allow the Applicant to submit additional supporting

documentation. Applicant's request for an extension was granted, and the record remained open until close of business on December 9, 2015. Applicant did not submit any documentation. The official transcript (Tr.) was received on November 30, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 56 years old, and divorced. He has an Associates degree and is currently in school to complete his Bachelor's degree in Management. He is employed with a defense contractor as a Technical Writer 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 admits both of the allegations set forth in the SOR under this guideline. (See Applicant's Answer to the SOR.) Credit reports of the Applicant dated July 26, 2001; June 9, 2012; December 10, 2014; and September 30, 2015, reflect that the Applicant is indebted to two separate mortgage lenders in an amount totaling in excess of \$170,000. (Government Exhibits 2, 3, 4 and 5.)

Applicant served on active duty and in the reserves for the United States Air Force from 1977 until he retired in 2005. He is an honorable veteran of the Air Force, serving at the highest pay grade of E-7 as a master sergeant. Applicant has worked for his current employer since June 2002, and held a security clearance since then.

Applicant attributes his financial indebtedness to bad decisions he made in the past regarding his failed business venture and failed marriage. He was married in 1981 and divorced in 1994. As a result of the divorce, Applicant was awarded custody of the children, and was also required to pay spousal support and child support to his ex-wife. (Tr. p. 36.) Sometime later, he learned that his wife had charged up credit card debt that he was unaware of, but that he was responsible to pay. Applicant could not afford to pay all of the monthly bills on his income. For a time, Applicant pulled money from his 401(k) to pay the creditors. At the time, the downturn in the stock market substantially reduced his savings, and forced him to file for Bankruptcy.

Within one month after retiring from the Air Force, Applicant opened his own business, a memorabilia store for children. To finance the business, he took out a second loan from a rental property he owned in the amount of \$123,715. Applicant had

difficulties keeping responsible renters in the property. The tenants occupied the property without paying rent for about six months before they were evicted. At the same time, Applicant worked as hard as he could to make his business survive, hoping that business would turn around, but he had to close the doors in 2007. (Applicant's Exhibit D.) He was unable to make the mortgage payments. He tried to negotiate a settlement with the lender, but they refused. Applicant was forced to allow the property to go into foreclosure. Applicant became indebted to a lender on an account that has been charged off in the approximate amount of \$123,715. Applicant has not paid the lender for the money he borrowed. He has not addressed the debt in any form or fashion. (Applicant's Exhibit B.)

In 2006, Applicant took out a second mortgage in the amount of about \$57,000 from a another rental property he owned. Applicant used the money to do renovations on the property and to help pay for it. Again, Applicant was having problems with tenants not paying the rent. In an effort to keep the property, Applicant contacted the lender and requested a loan modification. Applicant was able to modify or restructure the loan, but thought the second was included in the deal. About three or four years later, in about 2008, Applicant was notified that the second was not included in the mortgage modification. Applicant became indebted to a lender on an account that has been charged off in the approximate amount of \$53,866. Applicant has not paid the lender the money he borrowed. Applicant states that he is presently in negotiations with the bank to work out an agreement to settle the matter. (Applicant's Exhibit B.)

Applicant's financial situation to include his property portfolio indicates that he currently owns three properties, consisting of two rentals, and one primary residence. Two of the properties are in the positive. He is four years from his military retirement, expecting about \$1,500 monthly. He is also holding a 401(k) that contains about \$240,000, not counting the retirement benefit from his current employer. (Applicant's Exhibit 3.) Applicant testified that if he had wanted to pay off the debts, he could have. He could have possibly sold one of his properties, or took money from his 401(k) to pay his debts. He simply chose not to do so. (Tr. p. 67.)

Applicant has also been engaged in various community service projects, including, being an executive board member of his community church, a mentor and member of the Big Brother Organization, a past football coach, as well as being a college student with a grade point average of 3.57. (Applicant's Exhibit .A)

Applicant has failed to submit any evidence beyond this to show that he has started making payments toward his debt or that he has resolved it. He has not produced a receipt or statement from a creditor confirming that any of his debt has been paid, or a settlement reached, a cancelled check, or a new credit bureau report showing final payment.

Applicant states that his intention is to resolve his delinquent debt and he is working slowly to resolve it. He states that he is currently in negotiations with one of the lenders. He has provided no documentary evidence showing that he has contacted his

creditors about his situation, nor is there any evidence demonstrating that he has paid off anything, or that he has made any payments to reduce his debt or even that he has set up a payment plan.

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 obligation.

Conditions that could mitigate security concerns:

20.(b) the conditions 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, dishonesty or conduct 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.

Obviously, there were circumstances beyond Applicant's control that contributed to his financial problems. Namely, Applicant's divorce, his failed business venture, and a series of bad tenants. Since then, however, little has changed. Applicant has taken no steps to try to work with or pay off either of his creditors. He has not resolved his delinquent debts. He states that he is in negotiations with one of the credits but presents nothing more. There is nothing in the record that demonstrates any change in his financial habits. Presently, Applicant remains excessively indebted.

Furthermore, 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.

Applicant's history of financial indebtedness has not been mitigated. He remains excessively indebted. He has not started the process of resolving his debts and has a long way to go to demonstrate that he is fiscally responsible. Applicant must show that he can and will resolve his debts. He stated that he could have paid off his delinquent debts if he wanted to, yet he has chosen not to pay them yet. At this time, there is insufficient evidence of financial rehabilitation. Applicant has not demonstrated that he can properly handle his financial affairs.

Applicant has not met his burden of proving that he is worthy of a security clearance. Assuming that he starts to resolve his delinquent 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. Mitigating Condition 20.(b) *the conditions 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* arguably applies, but is not controlling. Here, Applicant has failed to show that he has acted responsibly. Although he had the resources available to pay off his debts, he chose not to do so. In fact, Applicant has not made even one payment toward resolving either of the debts. 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, 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 his personal conduct, and the effects 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.	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