



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)

ISCR Case No. 10-11168

Appearances

For Government: Jeff Nagel, Department Counsel
For Applicant: *Pro se*

November 28, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on June 30, 2010. (Government Exhibit 1.) On April 8, 2011, the Defense Office of Hearings and Appeals (DOHA), 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.

The Applicant responded to the SOR on June 22, 2011, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on August 4, 2011. A notice of hearing was issued on September 22, 2011, and the hearing was scheduled for October 18, 2011. At the hearing the Government presented seven exhibits, referred to as Government Exhibits 1 through 7, which were admitted without objection. The Applicant called one witness and presented six exhibits, referred to as Applicant's Exhibits A through F, which were also admitted without objection. He also testified on his own behalf. The record remained open until

close of business on October 28, 2011, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted no additional documentation. The official transcript (Tr.) was received on October 28, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 31 years old and single with no children. He is a high school graduate with several technical college classes. He is employed with a defense contractor as an Avionics Technician 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 admitted each of the delinquent debts set forth in the SOR under this guideline, except 1(s) and 1(t), which are tax debts. He also denied 1(u), 1(v), 1(w), 1(x), and 1(y), regarding his failure to file his state and federal income tax returns. Credit Reports of the Applicant dated July 22, 2010; January 10, 2011; and October 17, 2011, reflect that the Applicant is indebted to approximately twenty creditors set forth in the SOR, in an amount totaling approximately \$11,000.00. (Government Exhibits 5, 6 and 7.)

The Applicant began his employment with a defense contractor approximately three years ago. Prior to that, he worked at a gas station, a computer shop and he repaired copiers. He has never applied for or held a security clearance before.

The Applicant explained that he grew up in a troubled and abusive home that eventually ended up in divorce. As an adult, he was immature, irresponsible and careless and did not make it a priority to pay his bills. As a result, he became indebted to the creditors listed in the SOR. In addition, while working as a self-employed copier repairman, he did piece work and thought that taxes were being taken out of his check when they were not. He made a conscious decision not file his income tax returns as he knew he would have a significant tax debt. He did not file his federal income tax returns for tax years, 2003 and 2006, nor did he file his state income tax returns for tax years 2003, 2004 and 2006. The SOR alleges delinquent taxes owed to IRS in the amount of \$2,741, and the state in the amount of \$3,622. Since working for his current employer, over the past two and a half years, he has been working to resolve his tax indebtedness. In total, he believes he has paid \$12,000 in back taxes. He has paid off

his back tax debt, and he filed all of his income tax returns in January 2011. (Applicant's Exhibits D and E.)

The following delinquent debts remain owing: 1(a). A debt to a creditor in the amount of \$145. 1(b). A debt owed to a creditor in the amount of \$707. 1(c). A debt owed to a creditor in the amount of \$644.00. 1(d). A debt owed to a creditor in the amount of \$913. 1(e). A debt owed to a creditor in the amount of \$109. 1(f). A debt owed to a creditor in the amount of \$2,447. 1(g). A debt owed to a creditor in the amount of \$186. 1(h). A debt owed to a creditor in the amount of \$122. 1(i). A debt owed to a creditor in the amount of \$954. 1(j). A debt to a creditor in the amount of \$1,461. 1(k). A debt owed to a creditor in the amount of \$644. 1(l). A debt owed to a creditor in the amount of \$163. 1(m). A debt owed to a creditor in the amount of \$124. 1(n). A debt owed to a creditor in the amount of \$808.00. 1(o). A debt owed to a creditor in the amount of \$103.00. 1(p). A debt owed to a creditor in the amount of \$604.00. 1(q). A debt owed to a creditor in the amount of \$164. 1(r). A debt owed to a creditor in the amount of \$1,248.

Now that he has paid his taxes, the Applicant plans to turn his focus on his delinquent debts. He states that he has between \$500 and \$600 monthly to now use toward paying his debts and he plans to pay them off as soon as possible. He is embarrassed by his past and is committed to a new and improved lifestyle. He wants to eventually purchase a house and have a family. He believes that he has significantly matured and has turned his life around for the better.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for a security clearance because he engaged in conduct involving questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations that raises questions about his reliability, trustworthiness and ability to protect classified information.

The Applicant admitted the allegation set forth in the SOR under this guideline. From 2006 through 2007, the Applicant took a variety of illegal drugs for various reasons without considering the fact that they were illegal. While he was drunk at parties, he would use marijuana or cocaine a few times. He used vicodin for a toothache a couple of times. A friend of his gave him some oxycotin that he used after suffering a bad motorcycle accident where he hit a fence going 60 miles an hour. He did not go to the doctor because he had no medical insurance. For the pain, he also took morphine that was given to him by a roommate whose mother had passed away from cancer. He still suffers from an injured rotator cuff. The Applicant now realizes how stupid he was to self-medicate with illegal drugs. He states that he has not used any illegal drugs since 2007 and has no intentions of ever doing so in the future.

The Applicant's cousin, with whom the Applicant lives and works, testified that the Applicant is working hard to rebuild his life after making many mistakes in the past. He has shown maturity and plans to pay his other bills off as soon as possible. He quit

drinking alcohol and using drugs, and has been extremely productive. He is considered trustworthy and responsible.

A letter of recommendation dated October 10, 2011, from a Platoon Leader and 2nd Lieutenant in the United States Army Reserves who holds a security clearance and has known the Applicant since the second grade, indicates that he has full confidence in the Applicant to hold a security clearance. Aware of his past mistakes, the Applicant has still been a loyal friend, a steward of the community, a stellar student, and is gifted in computer science. He has seen the Applicant work toward self improvement and turn himself around. The Applicant is recommended for a security clearance. (Applicant's Exhibit B.)

A letter of recommendation dated October 17, 2011 from a Navy retired coworker of the Applicant who has known him for the past two years, states that he has watched the Applicant mature and grow in the defense industry. In his opinion, the Applicant has learned the importance of proper handling of classified information and believes that he can be trusted with the nation's secrets. (Applicant's Exhibit B.)

A letter of recommendation dated October 17, 2011, from a close friend of the Applicant's attests to his honesty and integrity. (Applicant's Exhibit B.)

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:

None.

Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Condition that could raise a security concern:

16.(c) Credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, a lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

16. (e) association with persons involved in criminal activity.

Conditions that could mitigate security concerns:

17.(c) The offense is so minor, or so much time as passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

17.(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

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 and poor personal 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.

In this case the Government has met its initial burden of proving that the Applicant has been financially irresponsible (Guideline F) and has used illegal drugs (Guideline E). 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 for many years the Applicant was immature and irresponsible. He did not pay his bills, including his taxes, nor did he file his income tax returns. For the past two and half years he has been working toward resolving his tax liability. He has recently resolved his tax issues. However, he not yet started to address his other delinquent debts.

Under the particular circumstances of this case, the Applicant has not met his burden of proving that he is worthy of a security clearance. Except for his back taxes, he has not addressed one of 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 set up a payment plan or made any attempt to pay his debts. He remains excessively indebted. He has not shown that he is or has been reasonably, responsibly or prudently addressing his financial situation. At this time, there is insufficient evidence of financial rehabilitation. The Applicant has not demonstrated that he can properly handle his financial affairs or that he is fiscally responsible. Assuming that he follows through with his plan to resolve his debts and shows that he does not acquire new debt that he is unable to pay, he may be eligible for a security clearance in the future. 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. None of the mitigating conditions are applicable. At this time he still remains excessively indebted. Thus, he has not done enough to show that he is fiscally responsible. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

The Applicant's illegal drug use was sporadic and irregular between 2006 and 2007, and has not recurred. He has been drug free for the past four years and has no plans to ever use any illegal drug in the future. Under Guideline E, (Personal Conduct) Disqualifying Conditions 16.(c) *credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, a lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information*, and 16. (e) *association with persons involved in criminal activity* apply. Mitigating Conditions 17.(c) *the offense is so minor, or so much time as passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not*

cast doubt on the individual's reliability, trustworthiness, or good judgment, and 17.(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations are also applicable. Accordingly, I find for the Applicant under Guideline E (Personal Conduct).

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information, including his favourable letters of recommendation. 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 financial indebtedness and the effects that 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.
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.:	Against the Applicant.
Subpara. 1.h.:	Against the Applicant.
Subpara. 1.i.:	Against the Applicant.
Subpara. 1.j.:	Against the Applicant.
Subpara. 1.k.:	Against the Applicant.
Subpara. 1.l.:	Against the Applicant.
Subpara. 1.m.:	Against the Applicant.
Subpara. 1.n.:	Against the Applicant.
Subpara. 1.o.:	Against the Applicant.
Subpara. 1.p.:	Against the Applicant.
Subpara. 1.q.:	Against the Applicant.
Subpara. 1.r.:	Against the Applicant.

Subpara. 1.s.: For the Applicant.
Subpara. 1.t.: For the Applicant.
Subpara. 1.u.: For the Applicant.
Subpara. 1.v.: For the Applicant.
Subpara. 1.w.: For the Applicant.
Subpara. 1.x.: For the Applicant.
Subpara. 1.y.: For the Applicant.

Paragraph 2: For the Applicant.
Subpara. 2.a.: 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