



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 11-00214
)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Department Counsel
For Applicant: *Pro se*

August 15, 2012

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on November 15, 2007. (Government Exhibit 4.) On February 22, 2012, 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 in writing on March 21, 2012, in which he 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 the Applicant on or about May 28, 2012. The Applicant received the FORM on May 29, 2012. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. The Applicant failed to submit a reply to the FORM. This case was assigned to the undersigned on July 17, 2012. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 42 years old and married. He is employed with a defense contractor as a Senior Field Service 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 allegations set forth under this guideline, except 1.h, which he disputes. Credit Reports of the Applicant dated November 28, 2007; February 19, 2010; and May 8, 2012, reflect that the Applicant was indebted to each of the creditors set forth in the SOR, in an amount totaling approximately \$150,000. (Government Exhibits 5, 7 and 11.)

The Applicant has a history of financial problems as evidenced by his current delinquent debts. His problems began when his wife's company relocated to State A, and he purchased a house there. Shortly thereafter, her company relocated again and moved back to their original location. The Applicant was unable to sell their house in State A due to the declining housing market. On the advise of his Bankruptcy attorney, in September 2008, the Applicant stopped making the mortgage payments on the house and it was eventually foreclosed upon.

1.a. In April 2009 the Applicant filed for Chapter 13 Bankruptcy with every intention of resolving his debts. (Government Exhibit 6.) In September 2009, he withdrew his petition and it was dismissed. The Applicant explained that he could not afford to make payments according to the terms offered to him by the court.

The following delinquent debts set forth in the SOR became outstanding. 1.b. The Applicant claims that he has paid off a credit card debt in the amount of \$4,904. He submitted two letters he wrote to the creditor inquiring as to why his payments were not being processing. He is still waiting a response. (Government Exhibit 3.) 1.c. The Applicant claims that is making regular monthly payments of \$45.00 toward a debt owed to a creditor in the amount of \$3,901. He states that he has reduced the debt to \$3,721.69, but has provided no supporting documentation. (Government Exhibit 3.) 1.d. A debt owed to a creditor in the amount of \$113,000 remains owing. The Applicant indicates that the creditor has not contacted him since he filed bankruptcy. (Government Exhibit 3.) 1.e. The Applicant claims that he has paid a debt owed to a creditor in the amount of \$601, but has provided no proof of payment. (Government Exhibit 3.) 1.f. The Applicant claims that he is currently making regular monthly payments of \$50 toward a debt owed to a creditor in the amount of \$3,653. He

submitted a letter from the creditor setting forth a settlement offer. He states that he plans to pay off the account by August 30, 2012. (Government Exhibit 3.) 1.g. The Applicant claims that he is currently making regular monthly payments of \$150 toward a debt owed to a creditor in the amount of \$11,708. He states that he has reduced the amount owed to \$7,200. (Government Exhibit 3.) 1.h. The Applicant denies that he owes a debt to a creditor in the amount of \$555, and disputes the debt. He states that the creditor cannot explain to him why the account still shows outstanding. (Government Exhibits 3.) 1.i. A debt owed to a creditor in the amount of \$18,222 has been forgiven by the creditor. (Government Exhibit 3.) 1.j. A debt owed to a creditor in the amount of \$415,000 for a mortgage on a home that was foreclosed upon has been forgiven. The Applicant submitted a 1099-A that shows his balance as zero. (Government Exhibit 3.) 1.k. A debt owed to a creditor in the amount of \$358 remains owing. The Applicant claims that he is currently working to resolve the debt. (Government Exhibit 3.) 1.l. The Applicant claims that the debt owed to a creditor in the amount of \$10,474 has been paid, as his credit report reflects a zero balance. (Government Exhibit 3.) 1.m. The Applicant claims that he is currently making regular monthly payments of \$199.35 toward a debt owed to a creditor in the amount of \$2,080. He states that he has reduced his balance on the account to \$907.59. (Government Exhibit 3.)

The Applicant submitted several letters he wrote to creditors requesting payment arrangements or inquiries to confirm the amount of the debt owed. There are no receipts or proof of payments. There is also some evidence that the Applicant hired a law firm to assist him with several of his debts. (Government Exhibit 3.) However, there is insufficient evidence in the record to show what, if anything, has been done.

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 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 some circumstances beyond the Applicant's control, namely, his wife's employment relocations, and the Applicant's inability to sell his out of state house, contributed to his financial difficulties. At some point he could not afford to continue making the mortgage payments on the house and it was eventually foreclosed upon. Even assuming the mortgage debt was written off by the bank, the other delinquent debts are significant. He states that he is making payments to resolve several of his other debts and has reduced some of what he owes. He has failed, however, to provide proof of payment, receipts or any documentation to support his statements concerning the reduction of his delinquent debts. Without more, the Applicant has failed to establish that he is fiscally responsible. In fact, the record is void as to evidence in mitigation. Furthermore, even assuming that he is actually making the payments he claims, he remains excessively indebted. He has not received financial counseling, nor is there any indication that his financial problem is under control.

Under the particular circumstances of this case, the Applicant has not met his burden of proving that he is worthy of a security clearance. 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. There is inadequate evidence in the record that he has paid even one of his delinquent debts. He obviously does not understand the importance of paying his bills on time. 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. His debts are significant. Assuming that he works 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, he is not eligible 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. Although Mitigating Conditions 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, it is not controlling. 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, 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.: For the Applicant.
Subpara. 1.j.: For the Applicant.
Subpara. 1.k.: Against the Applicant.
Subpara. 1.l.: Against the Applicant.
Subpara. 1.m.: 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