



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 11-01993
)
Applicant for Security Clearance)

Appearances

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

June 12, 2012

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on April 1, 2010. (Government Exhibit 1.) On January 23, 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 on February 15, 2012, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on March 22, 2012. A notice of hearing was issued on March 27, 2012, and the hearing was scheduled for April 19, 2012. At the hearing the Government presented nine exhibits, referred to as Government Exhibits 1 through 9, which were admitted without objection. The Applicant presented four exhibits, referred to as Applicant's Exhibits A through D, which were also admitted without objection. He also testified on his own behalf. The record remained open until close of business on May 7, 2012, to allow the Applicant the opportunity to submit additional documentation.

The Applicant submitted fourteen Post-Hearing Exhibits on May 3, 2012, which were admitted without objection, and are referred to as Applicant's Post-Hearing Exhibits 1 through 4, and E through N. The official transcript (Tr.) was received on May 3, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 52 years old and has a high school diploma and some college. He is employed with a defense contractor as a Computer 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 all of the allegations set forth in the SOR. Credit Reports of the Applicant dated March 3, 2004; April 10, 2010; August 25, 2011; and April 12, 2012, reflect that the Applicant is indebted to each of the creditors set forth in the SOR, in an amount totaling in excess of \$50,000.00. (Government Exhibits 5, 6, 7, and 9.)

The Applicant served in the United States Air Force as a paralegal from 1978 to 1998 and retired as an E-6. He began working for his current employer in October 2003. That same year, he began having financial problems. He states that he had a very active social life and spent his money on entertainment. Instead of paying his bills, from 2003 to 2010, he was carefree and stupid with his spending and did a lot of things like going out drinking. (Tr. p. 51.) With respect to his taxes, for many years, he filed married when he was not, and claimed many exemptions or dependents, which he did not have, and received more money in his paycheck to spend. He ended up owing an enormous tax debt. (Tr. pp. 33 - 34.)

As a result of his irresponsible conduct, the following debts became owing and delinquent: 1(a) A debt owed to the Internal Revenue Service for past taxes owed for tax year 2003, in the amount of \$10,530.16. (Government Exhibits 5, 6, 7 and 9.) 1(b) A debt owed to Internal Revenue Service for past taxes owed for tax year 2004, in the amount of \$14,656.59. (Government Exhibits 5, 6, 7 and 9.) 1(c) A debt owed to the Internal Revenue Service for past taxes owed for tax year 2005, in the amount of \$17,822.63. (Government Exhibits 5, 6, 7 and 9.) 1(d) A debt owed to the Internal Revenue Service for back taxes owed for tax year 2006, in the amount of \$17,615.67. (Government Exhibits 5, 6, 7 and 9.) 1(e) A debt owed to the Internal Revenue Service

in for back taxes owed for tax year 2007, in the amount of \$13,511.16. (Government Exhibits 5, 6, 7 and 9.)

In 2001, the Internal Revenue Service started garnishing the Applicant's wages to pay his back taxes. (Tr. p. 36.) They are also garnishing part of his retirement benefits. The Applicant testified that through these garnishments he is currently contributing a total of \$2,400 a month toward his back taxes. (Tr. p. 36 and Applicant's Exhibit C.) The Applicant believes he has reduced his tax debt down to \$55,873.21.

1(f) A tax lien owed to a state taxing authority for back taxes owed for tax year 2007 in the amount of \$993.00 was outstanding. The debt was paid in full on March 23, 2012. (Applicant's Post-Hearing Exhibit F.)

Allegations 1(g), 1(h) and 1(i) were stricken from the SOR by the Government as they were determined to be duplicates of other debts alleged in the SOR. Accordingly, they are found in favor of the Applicant. (Tr. p. 41-42.)

In his Post-Hearing submission, the Applicant asserts that allegation 1(o) is a duplicate of the debt set forth in allegation 1(j) and requested that it be stricken from the SOR. The Government had no objection. Accordingly, allegation 1(o) is stricken from the SOR and found in favor of the Applicant.

Other debts reflected on the Applicant's credit reports are outstanding: 1(j) A debt owed to a creditor in the amount of \$592.00 was charged off and remains outstanding. (Government Exhibit 6.) 1(k) A debt owed to a creditor in the amount of \$409.00 was charged off and remains outstanding. (Government Exhibit 6.) 1(l) A debt owed to a creditor in the amount of \$1,667.00 was placed into collection and remains outstanding. (Government Exhibit 6.) 1(m) A debt owed to a creditor in the amount of \$220.00 was paid. (Tr. pp. 44 - 45, and Applicant's Exhibit D.) 1(n) A debt owed to a creditor in the amount of \$516.00 remains outstanding. (Government Exhibit 6.) 1(p) A debt owed to a creditor in the amount of \$691.00 remains outstanding. (Tr. p. 41.) 1(q) A debt owed to a creditor in the amount of \$690 remains outstanding. (Tr. p. 41.) 1(r) A debt owed to a creditor in the amount of \$270.00 remains outstanding. (Tr. p. 41.)

The Applicant testified, and his financial report reveals, that he currently receives \$1,200 monthly in military retirement benefits. After his back taxes are garnished from his payroll check he receives \$730 monthly from his employer. He also has a part-time job and earns \$360 monthly. This totals about \$2,300 monthly to live on. After paying his rent of \$1,950 monthly, he is left with \$350 for food, utilities and other necessities. He has no money left at the end of the month to pay any of his other delinquent debts. (Tr. pp. 54 -57 and Applicant's Exhibit B.)

His performance evaluation from January 22, 2011 to January 20, 2012, indicates that he consistently meets the requirements of the job. (Applicant's Exhibit A.)

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.

Conditions 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 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 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 the Applicant was careless and irresponsible for seven years, from 2003 to at least 2010, and did not pay his bills on time. He spent money partying and drinking. Since 2011, his wages have been garnished to pay for the back taxes he owed for tax years 2003, 2004, 2005, 2006, and 2007. Based upon his calculations, he believes he currently still owes about \$55,000 in back taxes to the federal government. In addition to back taxes, he also owes about \$5,000 to other creditors. In any case, the Applicant remains excessively indebted and has not paid the majority of his 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 at this time. Admittedly, he has recently started the process of addressing his financial indebtedness. His wages are being garnished to pay his back taxes. He has recently written letters to his creditors and inquired as to the status of the other delinquent accounts on his credit reports. However, at this point, he has not resolved his excessive indebtedness. He has not demonstrated that he has reasonably, responsibly or prudently addressed his financial situation. There is still quite a bit of work to do and there is insufficient evidence of financial rehabilitation. In the event that the Applicant continues to pay off his indebtedness he may be eligible in the future for a security clearance, but not at this time. The Applicant has not demonstrated that he can properly handle his financial affairs or that he is fiscally responsible. 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 (c) *a history of not meeting financial obligations*, apply. None of the mitigating conditions are applicable. Most of his delinquent debts remain owing and he has not shown that he is financially responsible. 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 excessive 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.: For the Applicant.
Subpara. 1.g.: For the Applicant.
Subpara. 1.h.: For the Applicant.
Subpara. 1.i.: For the Applicant.
Subpara. 1.j.: Against the Applicant.
Subpara. 1.k.: Against the Applicant.
Subpara. 1.l.: Against the Applicant.
Subpara. 1.m.: For the Applicant.
Subpara. 1.n.: Against the Applicant.
Subpara. 1.o.: For the Applicant.
Subpara. 1.p.: Against the Applicant.
Subpara. 1.q.: Against the Applicant.
Subpara. 1.r.: 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