



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 11-08730
)
Applicant for Security Clearance)

Appearances

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

April 5, 2013

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on April 5, 2011. (Government Exhibit 1.) On November 21, 2012, 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 Applicant, which detailed reasons why DoD adjudicators 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 Applicant and recommended referral to an administrative judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR on December 15, 2012, and he requested a hearing before an administrative judge. This case was assigned to the undersigned on January 24, 2013. A notice of hearing was issued on January 29, 2013, scheduling the hearing for February 15, 2013. An amended notice of hearing was issued on February 14, 2013, rescheduling the matter for March 18, 2013. The Government presented seven exhibits, referred to as Government Exhibits 1 through 7, which were admitted without objection. Applicant presented one exhibit, referred to as Applicant's Exhibit A, which was admitted without objection. Applicant also testified on his own behalf. The record remained open until close of business on March 25, 2013, to allow Applicant to

submit additional documentation. Applicant submitted one Post-Hearing Exhibit consisting of three pages, referred to as Applicant's Post-Hearing Exhibit A, which was admitted without objection. The official transcript (Tr.) was received on March 26, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 47 years old, and divorced with two children. He has two years of college, but no degree. He is employed with a defense contractor as a Security Officer and is seeking to obtain a security clearance in connection with this 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 admitted allegations 1(a), 1(b), 1(c), 1(d), 1(e), 1(f), 1(l), 1(m), and 1(n) set forth in the SOR. He denied allegations 1(g), 1(h), 1(i), 1(j), and 1(k) which include state tax liens that he disputed. Credit Reports concerning Applicant, dated April 27, 2011; June 9, 2012; and January 15, 2013; reflect that Applicant is indebted to a number of creditors set forth in the SOR, in an amount totaling approximately \$40,000. (Government Exhibits 4, 5, and 6.)

Applicant began working for his current employer, a defense contractor, in July 2011. He has never held a security clearance. He was disciplined on one occasion for not following proper company procedure.

Prior to 2006, Applicant had good credit and he paid his bills on time. His financial problems began when he was laid-off from a previous job in 2005. At that same time, he and his wife separated. For a six-month period his income was limited to his severance pay and unemployment benefits. He and his wife were spenders and had been living beyond their means for some time. Applicant stated that they did not save money when they should have. (Tr. p. 75.) He also stated that he was confident that, after being laid off, he would find a comparable paying job to what he had before. He was wrong and did not have the foresight to think that he might not find a comparable paying job. His bills fell behind and he could not afford to pay them. He characterizes his current financial situation as, "strained." (Tr. p. 33.)

In July 2012, Applicant hired a credit consolidation company to assist him in resolving his debts. (Tr. p. 39.) He had hoped that they would negotiate payment plans and allocate monies to pay off his debts. His contract with the company requires that he

pay them \$79.00 monthly for their services, which is automatically deducted from his bank account. He believes that they are currently disputing some of his debts, and under negotiations with other creditors. He is not satisfied with their progress, however, as all of his bills still remain outstanding. He thought about filing for bankruptcy but he simply does not have the money to do so. (Tr. pp. 45-46.) Applicant admits that he was in panic mode and did not really know how to handle his financial affairs. He stated that he did not take the proper action to seek education from someone who could point him in the right direction. (Tr. pp. 50-51.) He has not taken any financial counseling classes. He testified that he had planned on paying off the smaller debts, but when his hours were cut he could not afford to do so. (Tr. p. 62.)

The following delinquent debts set forth in the SOR became owing and, but for three of the tax liens, all remain outstanding, as Applicant has not had the money to pay the debts.

1.(a) Applicant is indebted to a bank for an account placed into collections in the amount of \$11,000.

1.(b) Applicant is indebted to a bank for an unsecured loan in the amount of \$19,000. The last time he made a payment on the debt was in 2008.

1.(c) Applicant is indebted to a bank for a delinquent credit card account in the amount of \$1,109.00.

1.(d) Applicant is indebted to a bank for a delinquent account in the amount of \$3,794.00.

1.(e) Applicant is indebted to a creditor for a delinquent credit card in the amount of \$1,792.00

1.(f) Applicant is indebted to a creditor for an account that was charged off in the amount of \$252.00.

1.(g) Applicant was indebted in the amount of \$222.00 for a state tax lien entered against him in February 2005. Applicant explained that he had purchased a fishing boat in 2003, and these were taxes associated with the boat that were required to be paid every year. Applicant sold the boat but the taxes were still assessed against him. Applicant had three of the other four state tax liens removed for being invalid liens. (See Applicant Exhibit A, and Tr. p. 57.)

1.(h) Applicant was indebted in the amount of \$207.00 for a state tax lien entered against him in December 2008. This was removed as an invalid lien.

1.(i) Applicant was indebted in the amount of \$186.00 for a state tax lien entered against him in December 2009. This was removed as an invalid lien. (See Applicant's Exhibit A.)

1.(j) Applicant was indebted in the amount of \$162.00 for a state tax lien entered against him in December 2010. This was removed as an invalid lien. (See Applicant's Exhibit A.)

1.(k) Applicant is indebted in the amount of \$219.00 for a state tax lien entered against him in December 2006.

1.(l) Applicant is indebted to a creditor for a delinquent telephone account in the amount of \$121.00.

1.(m) Applicant is indebted to a creditor for a delinquent account in the amount of \$53.00.

1.(n) Applicant also failed to file his state and Federal income tax returns for tax years 2009 and 2010. In 2009, Applicant did not believe he earned enough money to file. The next year he was afraid to file because he knew he was going to owe money. (Tr. p. 65.) Although he has not provided copies of his returns, Applicant states that he has since filed his 2009 and 2010 state and Federal income tax returns. (Applicant's Answer to SOR.)

Applicant has been separated from his wife since 2005, but has been legally divorced for only about a year. (Tr. p. 27.) He earns about \$3,500 monthly working part-time. He currently rents a room and lives a meager lifestyle. He believes he will have the ability to pay his debts once his hours are increased and become more consistent. He states that he has learned a huge lesson through all of this.

Three letters of recommendation submitted on behalf of Applicant from a registered nurse, a friend, and a former contract administration manager who has had daily contact at work with the Applicant, attest to his professionalism and attention to detail, strong communication skills, hard-working nature, and impeccable character. He is known as one who never shies away from responsibility and is considered to be a valuable asset to the organization. He is also known as a dedicated father. (Applicant's Post-Hearing 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.

Condition 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;
- 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 adverse to an applicant 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 Applicant has been financially irresponsible (Guideline F). The evidence indicates poor judgment, unreliability and untrustworthiness on the part of Applicant. Because of the scope and nature of Applicant’s conduct, I conclude there is a nexus or connection with his security clearance eligibility.

The evidence shows that when Applicant was laid off from his job in 2005 his financial problems began. Thus, some circumstances beyond Applicant’s control started his financial problems. However, as he stated, he also lived beyond his means for

some time and did not save for a rainy day. Last year, he hired a debt consolidation firm to assist him in resolving his debts. Although he has been diligent about paying them their monthly fee, they have done little or nothing, or simply failed to make any progress toward helping him resolve his debts. None of the debts listed in the SOR have been paid and he remains excessively indebted. He currently owes approximately \$40,000 in delinquent debt alleged in the SOR.

Applicant has not done enough to show that he is fiscally responsible. Although he seems to understand the importance of paying his bills on time, he simply has not been able to do so. At this time, there is insufficient evidence of financial rehabilitation. Applicant has not demonstrated that he can properly handle his financial affairs.

Under the particular circumstances of this case, Applicant has not met his burden of proving that he is worthy of a security clearance. Sufficient time has passed that would have given him the opportunity to address his delinquent debts more efficiently. Presently his financial situation remains dismal. 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. Assuming that he continues to work to resolve his 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, 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 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* partially applies, but is not controlling. Accordingly, I find against 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 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 Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1:	Against Applicant.
Subpara. 1.a.:	Against Applicant.
Subpara. 1.b.:	Against Applicant.
Subpara. 1.c.:	Against Applicant.
Subpara. 1.d.:	Against Applicant.
Subpara. 1.e.:	Against Applicant.
Subpara. 1.f.:	Against Applicant.
Subpara. 1.g.:	Against Applicant.
Subpara. 1.h.:	For Applicant.
Subpara. 1.i.:	For Applicant.
Subpara. 1.j.:	For Applicant.
Subpara. 1.k.:	Against Applicant.
Subpara. 1.l.:	Against Applicant.
Subpara. 1.m.:	Against Applicant.
Subpara. 1.n.:	For 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 Applicant. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge