



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 11-08837
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank Jr., Department Counsel
For Applicant: *Pro se*

February 12, 2013

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on January 5, 2011. (Government Exhibit 4.) On August 10, 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 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 a date uncertain, 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 November 6, 2012. The Applicant received the FORM on November 21, 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 January 10, 2013. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 49 years old, and married with two children. He is employed with a defense contractor as an Unarmed Security Officer 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 in the SOR under this guideline. Credit Reports of the Applicant dated January 26, 2011, and June 8, 2012, reflect that the Applicant is indebted to a state government and the federal government for back taxes in an amount totaling approximately \$100,000.00. (Government Exhibits 9 and 10.) He has been working for his current employer since November 2010.

In 1989 the Applicant got married. He had two children from the marriage. He and his wife divorced in 2002. Since his divorce, he has had a history of financial indebtedness that has not been resolved. He claims that in addition to his divorce, credit card debts, a house payment, a car payment, and surgery for his back and neck, caused him to have too many bills to pay that he could not afford. He stated, "I have never been able to make enough money to pay all of my debts and pay child support for two children." (Government Exhibit 2.)

The Applicant admits that he is indebted to the Internal Revenue Service for a tax lien in the amount of \$59,924.00. In his answer to the SOR, he also admitted federal tax debts for tax years 1999 and 2002 totaling \$29,965.00, and a tax debt to the state totaling \$18,000.00.

He blames his ex-wife for not having filed appropriate paperwork, which caused his tax deficiencies. In September 2003, the Applicant filed for Chapter 7 bankruptcy and his delinquent debts were discharged in December 2003. (Government Exhibit 6.) In June 2012, he filed for Chapter 13. (Government Exhibit 7.) In fact, his bankruptcy filing reflects that the debts for the pertinent tax years has actually increased significantly. His 2012 Chapter 13 bankruptcy petition indicates federal tax debts of \$53,849.74 for tax year 2002; \$17,948.68 for tax year 2001; and \$15,351.80 for tax year 1997. He admitted state tax debts of \$1,550.77 and \$10,667.01 for tax years 2001 and 2002. Accordingly, he admitted federal tax debts totaling \$127,409.67 and a state tax debt totaling \$12,227.78. The court order mandated a pay deduction of \$200.00 per month for 36 months to be paid to the Chapter 13 trustee to resolve the debts. (Government Exhibit 5.) As of August 2012 that deduction had not begun.

The Applicant claims that at one point he was paying his taxes through a wage garnishment, which stopped when he was fired for violation of company policy. (Government Exhibit 5.) There is no evidence in the record of the of any substantial payments or any track record of trying to resolve his delinquent debts prior to filing for bankruptcy in 2012.

The Applicant's bi-weekly pay stubs reflect that he earns \$9.48 per hour, and with times working overtime he earns a bi-weekly salary between about \$700.00 and \$900.00. Applicant's personal financial statement shows monthly expenses of \$1,406.89, and no payments for debts including bankruptcy payments. In summary, his earnings are substantially less than his expenses without including his delinquent debts.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he has engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness 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.

The Applicant completed an Electronic Questionnaire for Investigations Processing dated January 5, 2011. (Government Exhibit 4.) In response to Question 22(e) on the application, which asked the Applicant if he has ever been charged with any offense related to alcohol or drugs, he answered, "NO." This was a false response. He failed to disclose his arrest and charge in 2002 involving marijuana. (Government Exhibits 8 and 9.) The Applicant explained that he thought at the time that he had answered the question correctly because the District Attorney dropped all charges and he was never taken to court. (Government Exhibit 2.) He states that he had also revealed all of the court paperwork to his employer about the charge. When he received the expungement order from the court clerk he was under the impression that everything had been resolved.

The Applicant further stated that when he answered the question on his security clearance application he did not read it correctly and answered it wrong. He states that it was an honest mistake for which he is sorry. He states that he has never tried to deceive or lie to anyone on any of his personal information. He further stated that when he was interviewed by the DoD investigator he was completely honest about everything.

Given the circumstances, I do not believe that the Applicant intentionally or deliberately sought to conceal his drug related offense from the government. In fact, he had previously fully disclosed his arrest and charge to his employer. He obviously made an honest mistake by not listing his drug related arrest and charge on his security clearance application. Although the charge was expunged, the Applicant should have revealed it to the Government in response to the question. The expungement order was not issued under the exception to the reporting requirement, pursuant to authority of 21 U.S.C. 844 or 18 U.S.C. 3607. It is noted that the Applicant is a lay person who

could easily have made this mistake. The Applicant is not an attorney and is not being held to an attorney's level of scrutiny.

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.

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.

Conditions that could raise a security concern:

None.

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 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 or dishonesty 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 regard to his personal conduct, under Guideline E, I find that the Applicant did not deliberately or intentionally conceal his drug related arrest in 2002 from the Government on his security clearance application. He misunderstood the question on the application, the expungement order, and was under the mistaken belief that he did not have to report it. Accordingly, I find for the Applicant under this guideline.

In this case 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.

There is a long history of financial indebtedness that has not been mitigated. Although the evidence shows that circumstances largely beyond his control started his financial problems, namely his divorce in 2002, ten years have past and he remains excessively indebted. He has filed bankruptcy twice within the last thirteen years. The most recent Bankruptcy petition was filed in 2012, just last year, and he remains significantly indebted. He currently owes approximately \$100,000.00 in back taxes.

The Applicant has failed to show that he is fiscally responsible. Simply filing Bankruptcy is not enough. He must show that he can and will resolve his debts. In this case, there is no evidence that he can or will do either one. He has not shown an ability to pay his tax debts or live within his means. At this time, there is insufficient evidence of financial rehabilitation. The Applicant has not demonstrated that he can properly handle his financial affairs.

Under the particular circumstances of this case, the Applicant has not met his burden of proving that he is worthy of a security clearance. 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, 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 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, but 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. Paragraph 2 is found for the Applicant.

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.:	For the Applicant.
Subpara. 1.e.:	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