



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 11-10114
)
Applicant for Security Clearance)

Appearances

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

February 12, 2013

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on May 16, 2011. (Government Exhibit 1.) On October 15, 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 on October 26, 2012, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on December 3, 2012. An amendment to the Statement of Reasons was issued to the Applicant by Department Counsel on November 23, 2012. A notice of hearing was issued on December 5, 2012, and the hearing was scheduled for January 17, 2013. At the hearing the Government presented seven exhibits, referred to as Government Exhibits 1 through 7, which were admitted without objection. The Applicant presented no exhibits, but testified on his own behalf. He requested that the record remain open until February 4, 2013, to submit additional

documentation. The Applicant failed to submit any additional documentation. The official transcript (Tr.) was received on January 28, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 33 years old and married. He has two years of community college and a certificate in human resources. He is employed with a defense contractor as an Assistant Facilities Manager 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 the allegation set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated May 27, 2011; August 3, 2012; November 23, 2012; and January 16, 2013, reflect that the Applicant was at one time indebted to a creditor for a medical account placed into collections in an amount totaling about \$62,667. (Government Exhibits 3, 4, 5 and 7.) The Applicant has been working full time for his current employer since March 2009.

In October 2005, the Applicant was employed on a cruise ship where he had limited medical insurance as long as he was employed there. He started experiencing debilitating joint pain that forced him to quit his job. He became very sick experiencing lung and kidney failure and other complications. After three unsuccessful attempts at trying to get medical attention at a clinic, he was referred to a hospital. Although he had no medical insurance he had a credit card and knew he could charge what he needed in order to pay for the medical care he needed. After a series of tests it was determined that he had lupus. He stayed in the hospital for three weeks and saw numerous specialists for his condition. He paid his doctor bills, lab work, and other medical expenses. While in the hospital he was told to apply for financial assistance that was funded by various charities including the Lupus Foundation. The Applicant applied for the financial assistance and received some charitable gifts that he thought covered his hospital expenses. When he left the hospital he did not receive any bills from the hospital nor did any adverse reporting end up on his credit report.

The Applicant testified that during his interview with the DoD investigator on June 21, 2011, he learned that he owed a debt to the hospital in the amount of \$62,667. Prior to learning about this debt, he has always paid his bills on time. He testified that

he has never before been late on a credit card debt, a car loan, car insurance, nor has he even had a lien or judgment entered against him.

When he received the SOR that alleged the particulars of the debt, he contacted the hospital to obtain more information. They initially could not find the Applicant's account as they had recently changed their accounting system. With real concern for his security clearance eligibility, he contacted them a second time and they were able to provide him with his account information. He states that he then contacted the collection agency to work out an agreeable settlement offer.

Since working for his current employer, the Applicant has received periodic pay increases and his management is pleased with his job performance.

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 denied the allegation set forth in the SOR under this guideline. (See Amendment to the SOR and Applicant's Answer to the Amendment.)

The Applicant completed an Electronic Questionnaire for Investigations Processing dated May 16, 2011. (Government Exhibit 1.) Question 26(g) on the application, asked the Applicant if he had any bills or debts turned over to a collection agency? The Applicant answered "NO." This was a false response. He failed to disclose the medical account that had been turned over to a collection agency that is discussed above. (Government Exhibits 3, 4, 5 and 7.) Since the Applicant did not know about the debt until he met with the DoD investigator he cannot be held responsible for deliberately failing to disclose it on his application.

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.

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 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 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.

In regard to the Applicant's personal conduct, I find the Applicant to be open, honest and candid. I do not find that he deliberately or intentionally concealed material information from the Government on his security clearance application regarding his medical account that is in collection. As discussed above, he was not aware of the debt until he met with the DoD investigator. Therefore, when he completed the application, he did not know about the debt and did not intentionally conceal it. Accordingly, I find for the Applicant under Guideline E (Personal Conduct.)

It is noted that the Applicant has normally been a responsible individual who has a history of paying his bills on time and living within his means. However, after his medical emergency he became tremendously delinquently indebted to one creditor in the amount of \$62,667. He has known about the delinquent medical account for over a year. Since then, he has done nothing more than contact the collection agency to negotiate a settlement. The debt currently remains outstanding and owing. He testified that he is still in the process of working out the arrangements. However, he has failed to provide any documentation to corroborate his efforts at settlement negotiations or to substantiate any of his testimony.

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 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 but is not controlling in this case.

Clearly the Applicant's medical emergency brings some mitigation, however, since learning of the debt, the Applicant has done very little if anything to address it, and cannot be said to have acted responsibly under the circumstances. Given the fact that the debt is so large, and he has not reached a settlement, he has not made even one payment toward resolving it, nor has he set up a payment plan, he cannot be said to have made a good faith effort toward resolving it, nor has he shown financial rehabilitation. 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.

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, 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 fails to 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 failed to 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.
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