



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
-----) ISCR Case No. 11-10499
)
Applicant for Security Clearance)

Appearances

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

June 13, 2013

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on May 2, 2011. (Government Exhibit 1.) On November 19, 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 December 21, 2012, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on April 1, 2013. A notice of hearing was issued on April 9, 2013, scheduling the hearing for April 24, 2013. At the hearing the Government presented seven exhibits, referred to as Government Exhibits 1 through 7 that were admitted without objection. The Applicant presented nine exhibits, referred to as Applicant's Exhibits A through I that were admitted without objection. He also testified on his own behalf. The record remained open until close of business on April 20, 2013, to allow the Applicant an opportunity to submit additional documentation. The Applicant submitted

two Post-Hearing Exhibits referred to as Applicant's Post-Hearing Exhibits A and B which were admitted without objection. The official transcript (Tr.) was received on May 6, 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 47 years old, and divorced. He has completed the General Education Development (GED) test and one year of college. He is employed with a defense contractor as a Site 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 each of the allegations set forth in the SOR under this guideline. Credit Reports of the Applicant dated August 10, 2012; May 12, 2011; and April 4, 2013, reflect that the Applicant is indebted to seventy-two separate creditors in an amount totaling approximately \$43,000. (Government Exhibits 4, 5 and 7.) Most of the delinquent debts are medical bills related to his back problems.

From 1985 to 2000, the Applicant was in the Army National Guard. He served three years on active duty, and ten years in the reserves. (Tr. p. 32.) During the military, Applicant began having back problems. Since then, he has had four epidurals and four surgeries on his back for degenerative disk disease. (Applicant's Exhibit H.) From 2000 to 2005, Applicant had little or no medical insurance. Without sufficient medical insurance he incurred numerous medical bills. He claims that he does not receive Veteran's Benefits and so he has been forced to pay out of pocket for private medical services. He states the he has been unemployed off and on throughout his working career which has created even more financial problems. Consequently, the Applicant became excessively indebted to creditors he could not afford to pay. In April 2011, Applicant was hired by his current employer and was assigned overseas.

The following delinquent debts became owing: 1.(a) A medical bill owed to a creditor in the amount of \$137; 1.(b) a debt owed to a creditor in the amount of \$325; 1.(c) a debt owed to a creditor in the amount of \$325; 1. (d) a debt owed to a creditor in the amount of \$228; 1.(e) a debt owed to a creditor in the amount of \$635; 1.(f) a debt owed to a creditor in the amount of \$1,120; 1.(g) a medical bill owed to a creditor in the amount of \$1,284; 1.(h) a medical bill owed to a creditor in the amount of \$653; 1.(i) a medical bill owed to a creditor in the amount of \$695; 1.(j) a medical bill owed to a

creditor in the amount of \$651; 1.(k) a medical bill owed to a creditor in the amount of \$194; 1.(l) a medical bill owed to a creditor in the amount of \$318; 1.(m) a medical bill owed to a creditor in the amount of \$261; 1.(n) a medical bill owed to a creditor in the amount of \$519; 1.(o) a medical bill owed to a creditor in the amount of \$255; 1.(p) a debt owed to a creditor in the amount of \$116; 1.(q) a medical bill owed to a creditor in the amount of \$590; 1.(r) a medical bill owed to a creditor in the amount of \$70; 1.(s) a medical bill owed to a creditor in the amount of \$148; 1.(t) a medical bill owed to a creditor in the amount of \$602; 1.(u) a medical bill owed to a creditor in the amount of \$185; 1.(v) a medical bill owed to a creditor in the amount of \$226; 1.(w) a medical bill owed to a creditor in the amount of \$154; 1.(x) a medical bill owed to a creditor in the amount of \$582; 1.(y) a medical bill owed to a creditor in the amount of \$215; 1.(z) a medical bill owed to a creditor in the amount of \$261; 1.(aa) a medical bill owed to a creditor in the amount of \$557; 1.(bb) a medical bill owed to a creditor in the amount of \$219; 1.(cc) a medical bill owed to a creditor in the amount of \$220; 1.(dd) a medical bill owed to a creditor in the amount of \$221; 1.(ee) a medical bill owed to a creditor in the amount of \$219; 1.(ff) a medical bill owed to a creditor in the amount of \$215; 1.(gg) a medical bill owed to a creditor in the amount of \$222; 1.(hh) a medical bill owed to a creditor in the amount of \$330; 1.(ii) a medical bill owed to a creditor in the amount of \$377; 1.(jj) a medical bill owed to a creditor in the amount of \$284; 1.(kk) a medical bill owed to a creditor in the amount of \$370; 1.(ll) a medical bill owed to a creditor in the amount of \$267; 1.(mm) a medical bill owed to a creditor in the amount of \$304; 1.(nn) a medical bill owed to a creditor in the amount of \$270; 1.(oo) a medical bill owed to a creditor in the amount of \$632; 1.(pp) a medical bill owed to a creditor in the amount of \$880; 1.(qq) a medical bill owed to a creditor in the amount of \$403; 1.(rr) a medical bill owed to a creditor in the amount of \$1,130; 1.(ss) a medical bill owed to a creditor in the amount of \$1,231; 1.(tt) a medical bill owed to a creditor in the amount of \$371; 1.(uu) a medical bill owed to a creditor in the amount of \$2,297; 1.(vv) a medical bill owed to a creditor in the amount of \$966; 1.(xx) a medical bill owed to a creditor in the amount of \$1,096; 1.(xx) a medical bill owed to a creditor in the amount of \$2,092; 1.(yy) a medical bill owed to a creditor in the amount of \$294; 1.(zz) a medical bill owed to a creditor in the amount of \$301; 1.(aaa) a medical bill owed to a creditor in the amount of \$649; 1.(bbb) a medical bill owed to a creditor in the amount of \$133; 1.(ccc) a medical bill owed to a creditor in the amount of \$2,318; 1.(ddd) a medical bill owed to a creditor in the amount of \$197; 1.(eee) a medical bill owed to a creditor in the amount of \$313; 1.(fff) a medical bill owed to a creditor in the amount of \$335; 1.(ggg) a medical bill owed to a creditor in the amount of \$436; 1.(hhh) a medical bill owed to a creditor in the amount of \$294; 1.(iii) a medical bill owed to a creditor in the amount of \$1,057; 1.(jjj) a medical bill owed to a creditor in the amount of \$1,011; 1.(kkk) a medical bill owed to a creditor in the amount of \$1,729; 1.(lll) a medical bill owed to a creditor in the amount of \$687; 1.(mmm) a medical bill owed to a creditor in the amount of \$647; 1.(nnn) a medical bill owed to a creditor in the amount of \$319; 1.(ooo) a medical bill owed to a creditor in the amount of \$172; 1.(ppp) a medical bill owed to a creditor in the amount of \$191; 1.(qqq) a medical bill owed to a creditor in the amount of \$297; 1.(rrr) a medical bill owed to a creditor in the amount of \$246; 1.(sss) a medical bill owed to a creditor in the amount of \$180; and 1.(ttt) a medical bill owed to a creditor in the amount of \$298.

In November 2012, Applicant hired a debt resolution company to assist him in resolving his debts. According to the agreed upon repayment plan, the Applicant is scheduled to pay \$447 monthly for 42 months that is placed into an escrow account and is distributed for payout among seventeen creditors that are listed on the agreement. (See Applicant's Post-Hearing Exhibit A.) For four months the Applicant made regular monthly payments in the amount of \$447 to the debt management company. He did not make his last month's payment because he needed to use the money to buy a bed. (Tr. p. 64.) He did not provide the debt resolution company with his entire list of creditors.

According to the Applicant's debt schedule provided by his debt resolution company dated March 13, 2013, out of seventeen listed debts, Applicant has paid a total of seven debts. Five debts owed to the creditor in allegations 1(s), 1(t), 1(v), 1(y), and 1(ff); one debt owed to a creditor in 1(hh), and one debt owed to a creditor in 1(f). These debts total \$1,736. There is no evidence that he has paid any other debt. (See Applicant's Post-Hearing Exhibit A, and Applicant's Exhibits B and C.)

Applicant's annual salary is \$52,000. His personal financial statement indicates that his monthly income is about \$3,031 and his monthly expenses are \$2,500. (Applicant's Exhibit E.) He states that he has \$800 in his savings account and \$1,500 in his 401(k). (Tr. pp. 59-61) He has incurred no new debt but things are tight and he has no discretionary monies.

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.

Applicant admitted each of the allegations set forth in the SOR under this guideline, with some explanations. He has an extensive history of traffic violations. Beginning in 2005, and continuing until at least 2010, he has been cited and fined for speeding on at least thirteen separate occasions. He was cited and fined for speeding in September 2005, March 2006, twice in July 2006, August 2006, May 2007, February 2008, February 2009, June 2009, September 2009, January 2010, March 2010 and August 2010. Applicant has satisfied all of the fines associated with these infractions. (See Applicant's Answer to SOR and Government Exhibit 2.)

Applicant has also been arrested on six separate occasions for various other criminal violations outlined below. In October 2000, he was arrested for Spousal Assault. He was found guilty and a Protective Order was issued against him. (Government Exhibit 2.)

On three separate occasions, in 1989, 1991 and 1998, Applicant was arrested for Driving Under the Influence (DUI). As a result of his most recent DUI, he was

sentenced to 6 months in jail, 3 years supervised probation and fined. (Government Exhibit 2.)

In August 1993, he was arrested on a warrant for Use/Under Influence of Controlled Substance, Possession of Controlled Substance, and Possession Paraphernalia. In July 1995, he was arrested and fined for Hit and Run Damage to Property. (Government Exhibit 2.)

Applicant did not provide accurate responses to certain questions on his security clearance application. He completed an Electronic Questionnaire for Investigations Processing dated May 2, 2011. Question 22.(e) of the application, 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 three DUI's in 1998, 1991 and 1989, and his arrest for Possession of a Controlled Substance in 1993. (Government Exhibit 1.)

Question 26.(g) of the same application asked the Applicant if in the last seven years he had bills or debts turned over to a collection agency? Question 26.(m) asked him if he has been over 180 days delinquent on any debts? Finally, question 26.(n) asked if he is currently over 90 days delinquent on any debts? The Applicant answered, "NO," to each of the questions. (Government Exhibit 1.) These were false responses. He failed to list any of the seventy-two delinquent debts set forth in the SOR. (Government Exhibit 1.)

Applicant explained that when he went on line to do his E-QIP, it was kicked back three different times for errors and mistakes. He found it difficult to complete. He believes that he simply misread it and answered the questions incorrectly by mistake. He states that he was not trying to be deceitful. (Tr. pp. 42-43.)

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:

16.(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include a breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information:

(3) a pattern of dishonesty or rule violations.

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, dishonesty or conduct 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, given the circumstances, I do not believe that the Applicant intentionally or deliberately falsified his security clearance application or sought to conceal his police record or his financial history from the Government. His police record and delinquent debts are simply too extensive and numerous and really prevent him from trying to conceal this information. I believe he gave erroneous answers by mistake. He was careless, but it was not deliberately done to conceal information from the Government.

However, despite this, Applicant's extensive police record involving numerous traffic infractions and arrests shows a true pattern of poor judgment, unreliability and untrustworthiness that has not been mitigated. Under Guideline E, (Personal Conduct), Disqualifying Conditions 16.(d) *credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior to include a breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information: (3) a pattern of dishonesty or rule violations* are applicable. None of the mitigating conditions are applicable. Accordingly, this guideline is found against the Applicant.

Furthermore, 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 back problems and periods of unemployment without medical insurance, several years have passed and he remains excessively indebted. At

the time of the hearing he had made only four payments of \$447 to the debt resolution company to be credited toward some of his delinquent debts, but not all of them. Furthermore, he was not current on the payments since he missed one because he purchased a bed. Admittedly, Applicant has started the process of resolving his debts but he has a long way to go to demonstrate that he is fiscally responsible. He has simply done too little, too late.

Applicant must show that he can and will resolve his debts. In this case, there is no evidence that he can do so. He has not shown an ability to pay all of his delinquent debts or live within his means. At this time, there is insufficient evidence of financial rehabilitation. Applicant has not demonstrated that he can properly handle his financial affairs.

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. There are simply too many delinquent debts that are not being addressed. 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 his personal conduct and the effects 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 Paragraphs 1 and 2 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. through Subpara. 1.z: Against the Applicant.
Except Supara. 1.f.: For the Applicant.
 Supara. 1.s.: For the Applicant.
 Subpara. 1.t.: For the Applicant.
 Subpara. 1.v.: For the Applicant.
 Subpara. 1.y.: For the Applicant.

Subpara. 1aa. through Subpara. 1.zz: Against the Applicant.
Except Supara. 1.ff.: For the Applicant.
 Supara. 1.hh.: For the Applicant.

Subpara. 1.aaa through Subpara. 1.ttt. Against the Applicant.

Paragraph 2: Against the Applicant.
Subpara. 2.a. through Subpara. 2.s.: Against the Applicant.
Subpara. 2.t through Subpara. 2.u.: 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