



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-02642

Appearances

For Government: Jeff Nagel, Department Counsel

For Applicant: *Pro se*

June 30, 2015

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) November 25, 2011. (Government Exhibit 1.) On October 17, 2014, 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 the DoD 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.

Applicant responded to the SOR on a date uncertain, and he requested an administrative hearing before an Administrative Judge. This case was assigned to the undersigned on February 18, 2015. A notice of hearing was issued on February 25, 2015, and the hearing was scheduled for April 21, 2015. At the hearing the Government presented seven exhibits, referred to as Government Exhibits 1 through 7, which were admitted without objection. Applicant presented no exhibits. He did testify on his own behalf. The official transcript (Tr.) was received on April 29, 2015. Based

upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 54 years old, and is divorced with two adult children. He has an Associate's degree and four years of college. He is employed with a defense contractor as a Design Engineer and is seeking to obtain a security clearance in connection with his 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 the delinquent debts set forth in the SOR under 1.a., 1.b., 1.c., 1.d., 1.h., 1.j., 1.m., and 1.r., and denied the remaining debts under this guideline. (See Applicant's Answer to SOR.) Applicant has worked for his current employer since June 2003. During this period, he has held a security clearance off and on when needed. Credit Reports of the Applicant dated December 6, 2011; June 13, 2013; April 4, 2014; February 4, 2015; and April 20, 2015, indicate that he is indebted to each of the creditors listed in the SOR. (Government Exhibits 3, 4, 5, 6 and 7.)

Applicant's financial problems began about 25 years ago, in 1979. He explained that when he first started working in the defense industry, he received a lot of overtime and depended on it in order to pay his bills. He was later selected for another job and his pay was cut. To accommodate this situation, he began claiming more dependents that gave him more money in his paycheck to spend, but less money toward taxes at the end of the year. At times he claimed as many as 10 dependents half of the year, and then went to zero in order to be able to cover his bills. Applicant got hooked to this system and continued doing this over the course of about twenty years. Applicant became indebted in back taxes to the Internal Revenue Service (IRS) for approximately \$73,000 for tax years 2001, 2005, 2006, 2008 and 2011. Tax liens were entered against the Applicant in November 2006 in the amount of \$19,917; in July 2007 in the amount of \$11,572; and in June 2011 in the amount of \$6,164. (1.a. through 1.d.) During this time, Applicant earned a good income, but had little or no savings. He had a large house payment, and then lost the house, went through a divorce, and started paying child support. He later purchased another house, (not in his name, due to his numerous tax liens) and several vehicles.

In 2011, Applicant stopped playing the tax exemption game. Since then he has paid his taxes each year to both the IRS and the state. In 2011, he set up a payment

arrangement with the IRS to pay the back taxes he owes. Each month \$400 is voluntarily garnished from his bank account and applied toward his debt. (Tr. pp. 51-52.) Applicant believes that he has paid at least \$34,000 of the \$75,000 that he owes. (Tr. p. 53.) He believes that he should now owe about \$41,000. (Tr. p. 53.)

In addition to his taxes, Applicant fell behind on other bills. 1.e., a delinquent debt owed to an apartment complex in the amount of \$697 was placed in collections and has not been paid. (Tr. p. 54.) 1.f., a delinquent medical bill in the amount of \$494 was placed in collections and has not been paid. (Tr. p. 54.) 1.g., a delinquent cellular telephone bill in the amount of \$147 was placed in collections and has not been paid. (Tr.p. 54.) 1.h., a delinquent mortgage account for a house that went into foreclosure has been settled. (Tr. P. 54.) 1.i., a delinquent medical bill in the amount of \$384 was placed in collections and has not been paid. (Tr. p. 56.) 1.j., a delinquent medical bill in the amount of \$106 was placed in collections and has not been paid. Applicant states that he paid the bill, but provides no proof. 1.k., a delinquent cable company account in the amount of \$67 was placed in collections and has not been paid. Applicant states that he paid the bill, but provides no proof. (Tr. p. 56.) 1.l., a delinquent medical account in the amount of \$247 was placed in collections and has not been paid. (Tr. p. 57.) 1.m., a delinquent bill in the amount of \$27 has not been paid. Applicant states that he paid the bill, but provides no proof. (Tr. p. 57.) 1.n., a delinquent medical account in the amount of \$1,831 has not been paid. (Tr. p. 57.) 1.o., a delinquent medical account in the amount of \$55 was placed in collections and has not been paid. (Tr. p. 57.) Applicant states that he paid the bill, but provides no proof. (Tr. p. 57.) 1.p., a delinquent medical account in the amount of \$327 was placed in collections and has not been paid. (Tr. p. 58.) 1.q. two delinquent medical accounts in the amount of \$129 and \$53 respectively, were placed in collections and have not been paid. (Tr. p. 58.)

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 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, 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 Applicant has a long history of poor decision making that resulted in his excessive indebtedness. Presently, he remains delinquently indebted to all of the creditors set forth in the SOR. Admittedly, he is paying his back taxes through voluntary garnishments. However, he has done absolutely nothing to address his other debts. He has not even contacted the creditors to discuss his situation with them. There is no documentary proof that he paid even the smallest of the debts, which is \$27. In the absence of documentary evidence submitted to show that Applicant has been able to attain some resolution on his delinquent debts and establish a track record of debt repayment, this concern must be decided against him in evaluating his suitability to have access to classified information.

Applicant's history of excessive indebtedness was brought on by a series of wrong decisions made to benefit himself. Instead of living within his means, for many years, he adjusted his income tax deductions to live beyond his means and he could never catch up. This conduct was not reasonable or responsible. He states that he is saving money to hire an attorney to help him with his tax situation because he has recently been informed by the IRS that he still owes at least \$41,000. (Tr. p. 53.) Without a showing of sufficient mitigation, Applicant demonstrates a pattern of

unreliability and poor judgment. Applicant has failed to provide proof of payment, receipts, or any documentation to demonstrate that he has, can, or will resolve his delinquent debts. There is nothing in the record to show that Applicant can live within his means. Without more, the Applicant has failed to establish that he is fiscally responsible. Furthermore, there is no evidence that he has received credit counseling to help him set a budget and learn to live within it, or that his finances are under control.

Under the particular circumstances of this case, Applicant has not met his burden of proving that he is worthy of a security clearance. He has not sufficiently addressed the delinquent debts in the SOR and therefore, he does not have a concrete understanding of his financial responsibilities. 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 reasonable, responsible, or prudent in addressing his financial situation. Applicant has not demonstrated that he can properly handle his financial affairs or that he is fiscally responsible. His debts are significant. Assuming that he demonstrates a history and pattern of fiscal responsibility, including the fact he has not acquired any new debt that he is unable to pay, he may be eligible for a security clearance sometime in the future. However, he is not eligible now. 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. There is no evidence in the record to show that Applicant has done anything to resolve his debts. In fact, from what is presented, Applicant could benefit from intense financial counseling. In this case, none of the mitigating conditions are applicable. Accordingly, I find against the 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 history of 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 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.	FOR Applicant.
Subparas.	1.b.	FOR Applicant.
Subpara.	1.c.	FOR Applicant.
Subparas.	1.d.	FOR Applicant.
Subpara.	1.e.	AGAINST Applicant.
Subpara.	1.f.	AGAINST Applicant.
Subparas.	1.g.	AGAINST Applicant.
Subpara.	1.h.	FOR Applicant.
Subpara.	1.i.	AGAINST Applicant.
Subparas.	1.j.	AGAINST Applicant.
Subpara.	1.k.	AGAINST Applicant.
Subpara.	1.l.	AGAINST Applicant.
Subpara.	1.m.	AGAINST Applicant.
Subparas.	1.n.	AGAINST Applicant.
Subpara.	1.o.	AGAINST Applicant.
Subpara.	1.p.	AGAINST Applicant.
Subparas.	1.q.	AGAINST Applicant.
Subpara.	1.r.	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 the Applicant.

Darlene Lokey Anderson
Administrative Judge