



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 12-03451
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Department Counsel
For Applicant: *Pro se*

May 9, 2014

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on November 11, 2011. (Government Exhibit 4.) On September 11, 2013, 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 October 12, 2013, 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 December 9, 2013. The Applicant received the FORM on December 18, 2013. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. The Applicant submitted a reply to the FORM on January 16, 2014. This case was assigned to the undersigned on April 11, 2014. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 52 years old, and although he was separated from his second wife, they have reconciled. He has a Master's Degree. He is employed with a defense contractor as a Desktop Support Specialist 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. (Government Exhibit 2.) Credit Reports of the Applicant dated November 3, 2009; November 23, 2011; and July 5, 2013, reflect that the Applicant is indebted to nine separate creditors in an amount totaling in excess of \$32,000. (Government Exhibits 6, 9 and 10.) Most of the delinquencies are credit cards and consumer debt.

Applicant served on active duty in the United States Navy from August 1979 to May 1983. Following that, Applicant worked for several employers before he began working for his current employer in January 2007. He has held a security clearance with his current employer since 2010.

Applicant fell behind on his bills, and accumulated credit card and consumer debt that he could not afford to pay. The following debts remain outstanding: 1.(a) a medical debt owed to a creditor in the amount of \$11,397. 1.(b) a debt owed to a creditor in the amount of \$2,346. 1.(c) a debt owed to a bank in the amount of \$4,786. 1.(d) a debt owed to a creditor in the amount of \$2,125; 1.(e) a judgment entered against the Applicant by a bank in the amount of \$5,564. 1.(f) a judgement entered against the Applicant by a bank in the amount of \$3,615. 1.(g) a debt owed to a creditor in the amount of \$711. 1.(h) a debt owed to a gasoline company in the amount of \$1,377. 1.(i) a debt owed to a creditor in the amount of \$811.

Applicant gives no explanation as to why or how he became indebted in the first place. He hired a debt management service to negotiate reduced balances and make payments to resolve his delinquent debts. (Government Exhibit 11.) He explained that instead of having to make several payments toward various creditors, his objective was to consolidate his debt into one source, and make one payment that is easier to manage. He paid \$177 monthly for them to handle his delinquent accounts for him. At some point, he began receiving collection calls from creditors, and learned that the monthly payments that he was sending to the company were not being used to resolve his debts. He stopped paying the debt management firm.

In August 2013 Applicant sent each of his creditors a letter with a settlement offer. A few of the creditors responded while others did not. Applicant claims that he is still working on resolving his delinquent accounts. (Applicant's Reply to the FORM.) Even so, Applicant has failed to submit any evidence beyond this to show that he has started making payments toward the debt or that he has resolved it. He has not produced a receipt or statement from a creditor confirming that the debt has been paid or a settlement reached, a cancelled check, or a new credit bureau report showing final payment.

Applicant's personal financial statement dated July 28, 2013, indicates that after paying his regular monthly expenses, he has a net monthly remainder of \$553, which could be used to pay his delinquent debt. Applicant states that his intention is to pay his debt off. There is no evidence, however, demonstrating that he has paid off anything, or that he has made any payments to reduce his debt.

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 denied allegation 2.(a), but admitted 2.(b) set forth in the SOR under this guideline. Applicant completed a security clearance application dated September 11, 2011, and answered, "NO," to a series of questions concerning his finances. (Government Exhibit 4.) Section 26: have any of the following happened? In the past seven years, have you had bills or debts turned over to a collection agency? Have you had any account or credit card suspended, charged off or cancelled for failing to pay as agreed? Have you been over 120 days delinquent on any debt? The Applicant answered, "NO," to each of the questions. (Government Exhibit 4.) These were false responses. He failed to list seven of the nine delinquent debts set forth in 1.b., 1.c., 1.d., 1.e., 1.g., 1.h., and 1.i., of the SOR. (See Applicant's Answer to SOR.)

Applicant claims that at the time he completed the security clearance application, he did not know that his debt had become so negative. He believed that because he had hired the debt management company, his financial matters were being handled. He further claims that he had not received notices from the creditors to indicate that his credit had become seriously delinquent. (Applicant's Reply to the FORM.)

In November 2003, Applicant was charged with two counts of Grand Larceny, a felony. Applicant stated that he was in serious financial crisis with student loans and other bills at the time. He was working as a part-time security guard in the evenings, when he and a coworker decided to steal a video projector from work with the intention of obtaining a small loan on it or selling it outright for profit. Applicant and his coworker took it to a pawn shop and each received \$700. Applicant then paid the remainder of rent that was due and several insistent creditors. Before he was able to buy back the

projector, it was noticed missing and he was arrested. He pled guilty to one count of Grand Larceny, a felony, in October 2004. He was sentenced to three years probation, ordered to complete 100 hours of community service and ordered to pay \$4,500 in restitution. (Government Exhibit 8.) Applicant has since satisfied all of his sentencing requirements associated with this conviction. Applicant contends that he disclosed this information to the investigators in 2009, and on his 2009 security clearance 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:

None.

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.(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

16.(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, 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.

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, Applicant sought to conceal his financial history from the Government by intentionally omitting this information from his security clearance application. At the time he completed the application in 2011, he knew or should have known that he had a number of delinquent debts of concern. In fact he knew that he had delinquent debt since he took it upon himself to hire the debt consolidation firm. He also knew at the time he completed the application that his debts were not fully resolved since he was still making monthly payments to the debt consolidation firm. The only reasonable conclusion for not revealing the truth concerning his delinquent debts is that he did not want the Government to know about

them. There is no excuse for this misconduct. I find that he deliberately concealed the information from the Government on the application.

Applicant's felony conviction for Grand Larceny shows poor judgment, unreliability and untrustworthiness. Applicant worked for his employer as a security guard and was hired for the specific purpose of protecting his employer's property. Applicant was entrusted to protect the premises, not to steal from them. He took advantage of his privileges and stole from his employer because he had financial problems he could not resolve lawfully. Since 2003, little has changed with respect to the Applicant's finances. He had financial problems in 2003, and he continues to have them now. There is nothing in the record that demonstrates any change in his financial habits. This type of misconduct is what the Government is trying to protect against by placing such strict requirements on security clearance eligibility. Although Applicant's conviction occurred in 2004, almost ten years ago, and has not recurred, the conduct is so egregious in nature, and since the Applicant remains excessively indebted, the conduct has not been mitigated.

Under Guideline E (Personal Conduct), Disqualifying Condition 16.(a) *deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*, and 16.(c) *credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgement, 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* apply. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline E (Personal Conduct).

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.

Applicant's history of financial indebtedness has not been mitigated. He remains excessively indebted. Applicant has not started the process of resolving his debts and has a long way to go to demonstrate that he is fiscally responsible.

It is acknowledged that the debt management firm caused the Applicant some delay in resolving his debts. However, several years have passed since then, and not much has been done. 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. None of the mitigating conditions are applicable. 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.	Against the Applicant.
Subpara. 1.b.	Against the Applicant.
Subpara. 1.c.	Against the Applicant.
Subpara. 1.d.	Against the Applicant.
Subpara. 1.e.	Against the Applicant.
Subpara. 1.f.	Against the Applicant.

Subpara. 1.g.	Against the Applicant.
Subpara. 1.h.	Against the Applicant.
Subpara. 1.i.	Against the Applicant.
Paragraph 2:	Against the Applicant.
Subpara. 2.a.	Against the Applicant.
Subpara. 2.b.	Against 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