



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



In the matter of:)
)
) ISCR Case No. 15-05686
)
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Department Counsel
For Applicant: *Pro se*

February 22, 2017

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) February 25, 2015. (Government Exhibit 1.) On February 6, 2016, 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.

The Applicant responded to the SOR in writing on March 1, 2016, 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 March 24, 2016. The Applicant received the FORM on April 13, 2016. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. The Applicant did not submit a reply to the FORM. This case was assigned to the undersigned on January 26, 2017. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 48 years old, and married with three daughters and one step-son. He has a high school diploma, an Associate's degree, and military training. He is employed with a defense contractor as a Logistics Coordinator and is seeking to obtain a security clearance in connection with this 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.

There are two delinquent debts set forth in the SOR totaling approximately \$24,000. Applicant admitted both of the allegations under this guideline. Applicant's credit report dated December 30, 2015, which includes information from all three credit reporting agencies, indicates that he is indebted to both of the creditors listed in the SOR. (Government Exhibit 4.)

Applicant served on active duty in the United States Navy from 1986 to 2010, over 24 years, and was honorably discharged. He understands the requirements to satisfy one's debts and meet one's financial obligations to be eligible for access to classified information. Following his long military career, he began working for his current employer in 2010. Applicant attributes his delinquent debt to his divorce, unexpected expenses related to caring for his daughters, caring for his ailing mother-in-law, providing for his step-son, assisting his current wife through her previous divorce, and other circumstances outside of his control. The following two debts became delinquent and remain unpaid.

1.a A debt to a creditor for an account was charged off in the approximate amount of \$4,493. Applicant stated that he used this credit card to purchase laptop computers for his three children so that they would have them for college. He also purchased a new television for himself, when his old one went out. Applicant claims that he missed a payment, and the creditor refused to work with him. The account balance went from \$1,800 to \$4,000 due to mounting interest and fees. He was unable to afford to pay the debt. He states that he recently set up a payment plan with the creditor of \$100 a month.

1.b. A debt to the credit union for an account that was charged off in the approximate amount of \$19,883.00. Applicant states that he used this credit card for emergency items and large purchases as well as travel and car repairs. Since he was not able to keep up with the payments, he eventually turned his back on the debt. He states that he has recently set up a payment plan with the creditor of \$100 a month.

Applicant has failed to submit any documentary evidence to substantiate efforts or payment arrangements made to resolve his delinquent debts. In fact, the record is bare and shows no mitigation.

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.

Condition 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.

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 behavioral 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 demonstrate 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 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 been unable to properly manage his finances over the years. As a result, he owes two creditors approximately \$24,000. He claims that circumstances beyond his control contributed to or caused his financial problems. Namely, a divorce, unexpected expenses related to caring for his children, including his wife's son, caring for his ailing mother, assisting his current wife through her previous divorce, and other daily life issues. In order to be eligible for a security clearance one must show the ability and willingness to pay one's bills. Applicant has failed to make this showing. He must exercise financial responsibility that demonstrates reasonableness. There is no such evidence in the record. At this time, he remains excessively indebted. He states that he has recently set up a payment plan with each of his creditors to pay \$100 monthly towards his delinquent debt. However, he has failed to provide documentary proof of this payment arrangement or receipts for monthly payments made.

Applicant's history of excessive indebtedness demonstrates a pattern of unreliability, and poor judgment. Without more, Applicant has failed to establish that he is financially responsible. Furthermore, there is no evidence indicating that he can live within his means. He has not received credit counseling or provided anything else to show that he is living within a budget, nor is there anything in the record to show 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. Simply stating that one has set up a payment plan and is making payments towards the debt is insufficient to demonstrate that one is actually paying the debt. One must provide documentary proof of the fact. In this case, the Applicant has provided nothing. 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 reasonably, responsibly, or prudently addressing his financial situation. In fact, Applicant has not demonstrated that he can properly handle his financial affairs or that he is fiscally responsible. 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, which is minimal at best, since he did not respond to the FORM, 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* also applies but is not controlling in this case. Applicant has not paid his delinquent debts, nor has he made a good-faith effort to do so. Applicant remains excessive indebted. This does not show good judgment. 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.	Against the Applicant.
Subpara. 1.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 Applicant. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge