



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



In the matter of:

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) ISCR Case No. 15-06288
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Applicant for Security Clearance

Appearances

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

November 8, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIPs) December 2, 2014. (Government Exhibit 1.) On May 4, 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.

Applicant responded to the SOR on May 28, 2016, and he requested a hearing before a Defense Office of Hearings and Appeals Administrative Judge. This case was assigned to this Administrative Judge on July 19, 2016. A notice of hearing was issued on August 12, 2016, scheduling the hearing for September 13, 2016. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant presented eight exhibits, referred to as Applicant's Exhibits A through H, which were admitted without objection. Applicant called one witness, and he also testified on his own behalf. The record remained open

until close of business on September 27, 2016 to allow the Applicant to provide additional supporting documentation. Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A, which was admitted without objection. The official transcript (Tr.) was received on September 21, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 57 years old, and divorced with one child. He has a Bachelor's degree in Electrical Engineering. He is currently employed as a Software Design Engineer with a defense contractor 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 ten delinquent debts set forth in the SOR. Applicant admitted each of the allegations set forth in the SOR under this guideline. Credit reports of the Applicant dated December 27, 2014; July 15, 2015; and July 2, 2016, which include all three credit reporting agencies, reflect that he is indebted to each of the creditors set forth in the SOR in an amount totaling \$130,000 in non-tax related debt, and approximately \$150,000 in Federal tax debt. (Government Exhibits 2, 3, and 4.) Applicant has worked in the defense industry for over twenty-five years. He has also held a security clearance in the past and has never violated DoD security regulations or company policy. He has been working for his current employer since November 2014.

During his marriage to his second wife from 2003 to 2008, Applicant paid his bills on time. His credit report dated June 19, 2007, shows that he was in good standing. (Applicant's Exhibit B.) Applicant testified that his wife was a big spender and she had three children when he married her. When they divorced in 2008, Applicant incurred certain debts from the marriage that he was required by court order to pay. Applicant explained that he was unable to pay the debts for several reasons. First, he was a self-employed single father raising a son. He maintained the home and all of the bills associated with providing for his son. Second, as a self-employed contractor at the time, he fell behind on his state and Federal quarterly tax payments from 2008 to 2011. He became indebted to the IRS for delinquent taxes in the amount of \$40,690 for tax year 2008; \$32,729 for tax year 2009; and \$74,572 for tax year 2010. As of January 2014 these taxes remained owing. (SOR allegations 1.h., 1.i., and 1.j.)

Applicant stated that he always filed his income tax returns on time. In January 2010, in an attempt to pay his taxes, he set up a payment plan with the state and made his first payment. As time passed, the penalties and interest continued to accumulate, and he fell farther behind. He currently owes the state taxing authorities \$5,500.22. (Applicant's Exhibit C.) In order to pay his taxes Applicant withdrew \$172,999 from his IRA in January 2014. (Applicant's Exhibit D.) He provided a copy of his check showing that he paid \$152,677.13 to the Internal Revenue Service to pay off his back taxes owed for tax years 2008, 2009, 2010 and 2011. (Applicant's Post-Hearing Exhibit A.) Applicant also provided copies of the release of federal tax liens for tax years 2008, 2009, 2010 and 2011. (Applicant's Exhibit E.) In 2012, Applicant thought that his tax debt was resolved. After filing his 2013 income tax returns, however, he learned that he had miscalculated the tax liability for withdrawing the monies from his IRA. He has not considered that this had bumped him into a higher tax bracket for tax year 2013. His new tax bill for the state was \$19,688.23. He owed the IRS a balance of \$21,241.40. At this point, Applicant started an installment agreement with the IRS. Since then he has made his payments and used his 2012 tax refund to pay the debt owed. He now owes nothing to the IRS. He owes the state \$5,500.22. He is making payments to the state of \$650 monthly. (Applicant's Exhibit C, and Tr. p. 55.)

To explore his options, Applicant contacted a credit counseling agency to assist him in resolving his debt incurred during the marriage, but he never enrolled in the program. (Tr. p. 47). The debts he incurred in 2008 from the marriage remain outstanding.

1.a. A delinquent credit card account that was placed for collection in the approximate amount of \$47,693. (Tr. p. 51.)

1.b. A delinquent credit card account that was placed for collection in the approximate amount of \$30,651. (Tr. p. 52.)

1.c. A delinquent credit card account that was placed for collection in the approximate amount of \$18,545. (Tr. p. 52.)

1.d. A delinquent credit card account that was placed for for collection in the approximate amount of \$15,186. (Tr. pp. 52-53.)

1.e. A delinquent credit card account that was charged off in the approximate amount of \$10,145. (Tr. p. 53.)

1.f. A delinquent credit card account that was placed for collection in the approximate amount of \$7,736. (Tr. p. 53-54)

1.g. A delinquent credit card account that was placed for collection in the approximate amount of \$3,652.

Applicant testified that he plans to resolve his taxes first and then address his other debts. He plans to get some advice first because he is not sure how to do it. He now receives a salary from his employer so he does not anticipate any future tax issues.

A good friend who grew up with him testified that he knows the Applicant very well and for many years. In the past, Applicant has borrowed \$10,000 to \$20,000 from him to help pay his bills and survive. (Tr. p. 63.) He knew about Applicant's difficult marriage and the money his wife was spending. He believes the Applicant to be reliable and trustworthy, and a great guy. He believes Applicant to be a man of integrity and responsibility.

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 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 in a nut shell shows that Applicant experienced a period of financial hardship in 2008 when he and second wife divorced. He took on the responsibility of being a single parent, raising his son and providing for his financial support. He also incurred debt from the marriage that he has not addressed. He fell behind on his taxes. His taxes grew enormous over time, but he has worked diligently to resolve them. He now owes only about \$5,500 in back taxes to the state. The IRS is now paid off, and the liens are released. But he still remains indebted in the amount of approximately \$130,000 in personal credit card debt that has not been addressed at all.

Applicant's history of excessive indebtedness, without sufficient mitigation, demonstrates a pattern of unreliability. Although he has shown some efforts to resolve his indebtedness, he has not shown enough. His delinquent debts are excessive and owing. Without more, Applicant has failed to establish that he is financially responsible.

Under the particular circumstances of this case, Applicant has not met his burden of proving that he is worthy of a security clearance. His circumstances have precluded him from showing financial responsibility, and he has not demonstrated the eligibility requirements for access to classified information. His history of excessive indebtedness does not demonstrate that he can properly handle his financial affairs. He remains excessively indebted to the creditors listed in the SOR. Assuming that he demonstrates a history and pattern of financial responsibility, including the fact that 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. It can be argued that 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.

However, this mitigating condition is not controlling. Applicant has simply been unable to address his debt incurred during the marriage since 2008. He could benefit from some 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, supports 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.
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.	For the Applicant.
Subpara. 1.i.	For the Applicant.
Subpara. 1.j	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