



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



In the matter of:)
)
) ISCR Case No. 15-07002
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Department Counsel
For Applicant: *Pro se*

February 23, 2017

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) March 28, 2015. (Government Exhibit 3.) On June 14, 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 August 22, 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 October 4, 2016. A notice of hearing was issued on November 3, 2016, scheduling the hearing for December 6, 2016. At the hearing the Government presented nine exhibits, referred to as Government Exhibits 1 through 9 which were admitted without objection. The Applicant presented nine exhibits, referred to as Applicant's Exhibits A through I, which were admitted without objection. He also testified on his own behalf. The record remained open until close of business on December 30, 2016, to allow the Applicant to submit supplemental

documents. Applicant submitted one additional documents, admitted without objection as Applicant's Post-Hearing Exhibit A. The official transcript (Tr.) was received on December 16, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 53 years old, never married, and has no children. He has a high school diploma and some technical training. He is employed with a defense contractor as a Sustainment Technician 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.

Applicant admits each of the allegations set forth in the SOR, except 1.a., under this guideline. Credit Reports of the Applicant dated November 18, 2009; March 12, 2010; April 21, 2015; and September 27, 2016, reflect that the Applicant is indebted to each of the creditors set forth in the SOR in an amount totaling approximately \$30,000. (Government Exhibits 4, 5, 6, and 7.) Applicant has worked for her employer since 2008. He is seeking to retain his security clearance.

Prior to 2006, Applicant and his long-term girlfriend started a landscape business, and purchased a house. Their business did well, and their home grew in equity. Over the course of a decade, they grew apart, and split up. The downturn in the economy negatively effected their business, it was not doing well and eventually closed. His girlfriend left, and she had no liability for any of the debts related to the business. Applicant sold the house for what he owed and started over. He stated that he went into survival mode, and ignored everything else. He had nowhere to live, and no job. In order to get back on his feet, he took the first available job, a job requiring him to travel extensively, sometimes around the world on a moment's notice. He states that this constant travel caused him to forget about his credit issues. A number of debts became delinquent and owing as residue from the relationship and the failed business.

Applicant admits that has been slow to address his debts. He claims that he has been busy dealing with his back injury and its repercussions. From January 2016 through August 2016, he underwent back surgery, followed by physical therapy, and rehabilitation. He was on disability for six weeks, and used this time to clean up his credit. (Tr. p. 43.)

1.a. A judgment was entered against the Applicant in January 2010 in the approximate amount of \$1,423. This was for a piece of landscape equipment he purchased for the business in 2007-2008. Applicant is still looking into this debt, and it remains outstanding. (Tr. pp. 55-56.)

1.b. A debt owed to a creditor was placed for collection in the approximate amount of \$38. Applicant believes this to be an overdraft on a checking account. He provided a copy of a check for \$39.43 that paid the debt on June 24, 2016. (Applicant's Exhibit H.)

1.c. A debt owed to a creditor was placed for collection in the approximate amount of \$23,484. On September 1, 2016, Applicant set up a payment plan of \$400 monthly which is automatically debited from his account payable on the 15th of the month. (Applicant's Exhibit B.)

1.d. A debt owed to a creditor was placed for collection in the approximate amount of \$2,758. About August 2016, Applicant has set up a payment plan where she is paying \$50 monthly that is automatically debited from his account. (Applicant's Exhibit E.)

1.e. A debt owed to a creditor was placed for collection in the approximate amount of \$703. Applicant states that she settled the account for \$400, and it is resolved. (Applicant's Exhibit C.)

1.f. A debt owed to a creditor was placed for collection in the approximate amount of \$476. Applicant purports that the debt set forth in allegation 1.e. is the same debt as the one alleged in this allegation. There was no evidence presented to the contrary. Accordingly, this debt was resolved. (Tr. p. 69.)

1.g. A debt owed to a creditor was placed for collection in the approximate amount of \$585. Applicant has paid the debt in full. (Applicant's Exhibit D.)

Applicant has also resolved other debts not listed in the SOR that include a debt for a delinquent telephone bill in the amount of \$228.15 that was paid off. (Applicant's Exhibit I.) Applicant has had no credit counseling, but has handled his situation himself. He has a savings account with \$1,500, and a checking account with \$2,000. He has no 401K. His spending is not extravagant.

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 the allegations set forth under this guideline. He completed an Electronic Questionnaire for Investigations Processing dated March 28, 2015. (Government Exhibit 3.) Section 22 asked, "Have you ever been charged with an offense involving alcohol or drugs?" The Applicant answered, "NO," to the question. (Government Exhibit 3.) This was a false response. He failed to list his two arrests for Driving Under the Influence of Alcohol in 1989 and 1991. Applicant stated that his arrests occurred so long ago that he had convinced himself that it would not be relevant to list them. Furthermore, he stated that he does not like putting his past criminal incidents down, because that is not really who he is, on forms. (Tr. pp. 82-84.)

Section 26 of the same questionnaire asked, "In the past seven years, have you had bills or debts turned over to a collection agency? Have you have 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?" After each question he was reminded to include financial obligations for which he was the sole debtor as well as those for which he was a cosigner or guarantor. The Applicant answered, "NO," to each of the questions. (Government Exhibit 3.) These were false responses. He failed to list the financial delinquencies set forth under paragraph 1, above.

Applicant explained that he did not have his financial records with him and he did not realize the extent of his indebtedness, or the seriousness of the application. Applicant explained that he was on work related travel, while tasked to complete the security clearance application in a very short time frame. He stated that he rushed to answer the questions. (Applicant's Answer to SOR.) He further stated that he did not understand the gravity of the form, and that his company did not explain it to him. He believed that he could explain the facts surrounding his financial situation at some later time. (Tr. pp. 81-82.)

Applicant was not truthful or candid in his responses to the questions regarding his arrest history on his finances on his security clearance questionnaire. Applicant testified in part that, ". . . I hadn't come to terms with dealing with that portion of my was life that I had put behind to move forward." (Tr. p. 79.) Although he may not have concealed this information on his security clearance application with malicious intent, there is no excuse for this misconduct. The questions on the questionnaire are not complicated or complex. Applicant knew or should have known to answer the questions truthfully and candidly, which he did not. The only plausible explanation for his failure to reveal the truth is because he did not want the government to know about it.

Applicant's earlier Questionnaire for Public Trust Position dated November 9, 2009, and his Electronic Questionnaire for Investigations Processing dated March 1, 2010, were also admitted into evidence. Applicant gives no mention of any financial problems on those applications. (Government Exhibits 1 and 2.)

Six letters of recommendation submitted on Applicant's behalf from his security officer, coworkers, and friends indicate that he is known to be dependable, responsible, honest and courteous. Through his hard work and dedication, he is said to provide a

great benefit to our Government. They all recommend him for a security clearance. (Applicant's Exhibit A.)

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; and

20.(d) the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts.

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.

Condition 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.

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 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 and 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.

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.

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 and 20.(d) the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts* also applies.

The evidence shows that Applicant’s failed business venture, caused by the downturn in the economy, caused his financial problems. When he started working again, instead of addressing his debts, he ignored them. It was not until he injured his

back that he took the time to slow down, and take a good look at his delinquent debts, and how to resolve them. Applicant did not want to file bankruptcy. Over the past two years, he has paid off several debts, and is making payments to resolve others. The judgment against him remains owing, but he plans to address it soon. He has turned his life around in a meaningful and productive manner. Based upon the totality of the evidence, Applicant has shown that he can properly manage his finances. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

In regard to his personal conduct, the same cannot be said. Applicant was not truthful and candid with the Government on his security clearance application when he intentionally omitted relevant information concerning his criminal record and his financial history. At the time he completed the application in 2015, he knew or should have known that he had a number of delinquent debts that occurred within the past seven years. He had filed out previous security clearance applications and knew or should have known their importance. The only reasonable conclusion for not revealing his history of indebtedness is because he did not want the Government to know about it. There is no excuse for this misconduct, and it 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* applies. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline E (Personal Conduct).

A security clearance is a privilege, not a right. In order to meet the qualifications for access to classified information, it must be determined that the Applicant is, and has been, sufficiently trustworthy on the job and in his everyday life to adequately protect the Government's national interest. In order to show that, Applicant must show that he is trustworthy, honest and reliable. According to the standards set forth in the Directive, based upon the conduct outlined here, this Applicant has demonstrated that he is not sufficiently trustworthy, and he does not meet the eligibility requirements for access to classified information.

Applicant has not met his burden of proving that he is worthy of a security clearance. 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.

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, and 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 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 Paragraph 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:	For the Applicant.
Subpara. 1.a.	For the Applicant.
Subpara. 1.b.	For the Applicant.
Subpara. 1.c.	For the Applicant.
Subpara. 1.d.	For the Applicant.
Subpara. 1.e.	For the Applicant.
Subpara. 1.f.	For the Applicant.
Subpara. 1.g.	For 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