



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



In the matter of:)
)
) ISCR Case No. 15-08821
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Department Counsel
For Applicant: *Pro se*

March 31, 2017

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on December 3, 2014. (Government Exhibit 1.) On June 9, 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 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 on August 24, 2016, and he requested an administrative hearing before a Defense Office of Hearings and Appeals Administrative Judge. This case was assigned to the undersigned Administrative Judge on September 27, 2016. A notice of hearing was issued on October 27, 2016, and the hearing was scheduled for November 22, 2016. At the hearing the Government presented four exhibits, referred to as Government Exhibits 1 through 4, which were admitted without objection. The Applicant presented five exhibits, referred to as Applicant's Exhibits A through E, which were also admitted into evidence without objection. He also testified on his own behalf, which were admitted without objection. The record remained open

until close of business on November 25, 2016, to allow the Applicant to submit additional documentation. The Applicant submitted two Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A and B, which were admitted without objection. The official transcript (Tr.) was received on December 1, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 46 years old, and never married. He is currently employed as a Helicopter Structural Mechanic with a defense contractor and is seeking to obtain a security clearance in connection with his 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 has failed to meet financial obligations that indicate a lack of judgment and also unwillingness to abide by rules and regulations which raise questions about his reliability, trustworthiness and ability to protect classified information.

Applicant admitted each of the the allegations set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) Applicant failed to file his Federal income tax returns for tax years 2009 and 2014. Applicant also fell delinquent on two debts totaling approximately \$9,400. Credit Reports of the Applicant dated January 15, 2015; and May 5, 2016, which include information from all three credit reporting agencies, reflect the financial indebtedness. (Government Exhibits 3 and 4.) Applicant states that it was not until he received the SOR that he realized the importance of these matters, and he filed both income tax returns in question on 2016. Applicant has been working for his current employer since January 2010.

Applicant served in he United States Navy from 1988 to 1991. He re-enlisted in 1999, and served again until 2003. During his military career, he was an Aircraft Mechanic, Second Class Petty Officer. He has a total of seven years on active duty and two Honorable Discharges. He has not held a security since he left military service.

Applicant stated that he failed to file his Federal income tax returns for tax year 2009 and 2014 in a timely fashion. He explained that in 2009 he was a civilian working for an American company, being paid in American dollars, while residing in foreign country A. The following year, he was transferred to work in foreign country B. It was difficult for him to get the information he needed from foreign country A in order to file his taxes. At that time, a tax preparer was not on post, and Applicant simply let the issue lapse. He stated that he did not fille his taxes in foreign country A, and knew that

he needed to file in the United States, but just let it go. He further stated that he finally filed his 2009 Federal income taxes four or five months before the hearing. (Applicant's Exhibit A.) He owes no back taxes. (Tr.p. 22.)

Applicant was also delinquent in filing his Federal income tax returns for tax year 2014. He stated that his tax caseworker told him that he had three years to file them because he was overseas. (Tr. p. 24.) Applicant finally filed then, by preparing them himself using the turbo tax program. (Applicant's Exhibit D.) They were filed in 2016, along with his 2009 Federal income tax returns. (Applicant's Exhibit B.) The Internal Revenue Service (IRS) has indicated that Applicant owes \$2,398. (Applicant's Exhibit C.) Applicant believes that he made a mistake in preparing his return. He states that he has tried a number of times to contact the IRS, but has been unsuccessful. He plans to go back to a tax preparer and have them resubmit his taxes to resolve the issue. In the meantime, he set up a payment plan to resolve the debt in the amount of \$280 per month, for a total of 12 months, scheduled to start December 2016. (Tr. p. 30, Applicant's Exhibit E ,and Applicant's Post-Hearing Exhibit B.)

A delinquent debt owed to a creditor in the amount of \$8,474 was charged off. Applicant opened the account in July 2006 to purchase a jeep. He explained that he was working overseas at the time, and had the money to pay, but he could not figure out how to make the payments. The car was eventually repossessed. Applicant owes the deficiency on the loan. He states that he was never notified by the creditor about the deficiency. (Tr. p. 32.) Applicant does not intend on paying the debt as it will negatively impact his credit score and remain on his credit report for the next six years.

A delinquent debt owed to a creditor in the amount of \$1,076 for self-storage was placed for collection. Applicant explained that he had paid \$200 per month for self-storage for several years. He finally decided that the items in storage were not worth the cost of the long term rent. The storage company informed him that his property would be sold at auction. Applicant was fine with that. Applicant decided not to pay the debt in order to protect his credit score. (Tr. p. 33.) He explained that if he made a payment on either of his two delinquent debts it would negatively effect is credit score, and remain on is credit report for the next six years. In order to void this from happening, he chose not to pay the debts.

A letter of reference from Applicant's Site Manager dated November 23, 2016, indicates that Applicant is one of the most knowledgeable and well-rounded structural mechanics they have had. He is the go-person for all complex structural repairs. He is considered to be an exemplary employee, and has been rated "outstanding" during every annual review by his supervisors. He is highly recommended for a security clearance. (Applicant's Post-Hearing 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 obligations'

19.(g) failure to file annual Federal, state or local income tax returns as required or the fraudulent filing of the same.

Condition 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 failed to file his Federal income tax returns in a timely fashion for tax years 2009 and 2014. During this period, he was working overseas, however, he knew that he was responsible for filing his Federal income tax returns in the United States. His failure to file his Federal income tax returns suggests that he has a problem abiding by well-established Government rules and regulations. Voluntary compliance with rules and regulations is essential for protecting classified information. Applicant provided copies of his Federal income tax returns for tax years 2009 and 2014, that he claims were filed in 2016, just four or five months before the hearing. It was only after receiving the SOR that Applicant took action to file his returns. This clearly shows that he has been strong-armed to file his income tax returns by the Defense Department, which undercuts any determination that he has shown good faith in doing so.

Furthermore, in regard to his delinquent debts, they remain owing. Applicant has not made a good-faith effort to resolve his past-due indebtedness. Instead he has chosen not to pay them in order to preserve his credit score. Applicant's conduct shows poor judgment, negligence and a lack of due diligence. His conduct does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information. This pattern of unreliability demonstrates that he has not met the burden of proving that he is worthy of a security clearance. There is no evidence of financial rehabilitation. 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*; 19.(c) *a history of not meeting financial obligations*, and 19.(g) *failure to file annual Federal, state or local income tax returns as required or the fraudulent filing of the same*, apply. None of the mitigating conditions are applicable. His explanation that he worked overseas for an American company and was paid in American dollars is not a viable excuse for failing to comply with the laws of this country requiring him to file annual income tax returns. Nor is there any rightful justification for choosing not to pay his delinquent debts. In either situation, mitigation has not been shown. 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, supports a whole-person assessment of poor judgment, untrustworthiness, unreliability, 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, including his favorable letter of recommendation. However, in this case, it does not mitigate the negative effects his failure to file his Federal income tax returns and pay his delinquent debts have on his ability to safeguard classified information. On balance, it is concluded that the Applicant has failed to 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 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. 1db.:	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