



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)

ISCR Case No. 14-03080

Appearances

For Government: Gina L. Marine, Department Counsel
For Applicant: *Pro se*

October 29, 2015

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) dated February 25, 2013. (Government Exhibit 2.) On November 14, 2014, the Department of Defense (DoD), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 a clearance should be denied or revoked.

Applicant responded to the SOR in writing on December 31, 2014, and 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 Applicant on May 4, 2015. Applicant received the FORM on August 22, 2015. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant submitted no response to the FORM. This case was assigned to the

undersigned on October 13, 2015. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

The following Findings of Fact are based on the Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 35 years old, and married with two children. He has a Bachelor's degree. He is employed by a defense contractor as a Background Administrator and is seeking to obtain a security clearance in connection with his employment. Applicant began his current employment in December 2012.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). After a complete and thorough review of the evidence in the record, and upon due consideration of the same, the following findings of fact are entered as to each paragraph and guideline in the SOR.

Paragraph 1 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for a security clearance because he engaged in conduct which shows dishonesty, questionable judgment, unreliability and/or untrustworthiness.

Applicant admits the allegation set forth in the SOR under this guideline. While on active duty as an officer in the United States Army, Applicant was charged with Dereliction of Duty and Making a False Official Statement in violation of Title 18, U.S. C, Section 1001.

In approximately June 2009 while Applicant was a company commander, his company received a shipment of 37 or 38 rifles. As part of his job responsibilities he was to required to inventory and certify receipt of the items. On receipt of the equipment, Applicant was present during the initial unpacking of the weapons, but left the area due to other responsibilities. Upon leaving the area, he instructed his armorer to inventory and secure the weapons. He states that his first sergeant placed an inventory of the weapons on his desk, and asked him to sign it and forward it to the brigade. The Applicant forgot about the inventory for two weeks, due to his pressing workload. (Government Exhibit 3.)

In July 2009 Applicant's first sergeant again informed him that the inventory was due. Applicant signed off on the inventory without ever reconciling the inventory with the weapons received by the unit. In August 2009 an audit was conducted and one of the rifles was missing from inventory. Applicant was questioned by the Army Criminal Investigation Division, and the brigade commander. Applicant told them that he had "eye-balled" and verified the weapons at the time they arrived at the company armory. (Government Exhibit 3.)

In September 2009 the missing weapon was discovered buried in a pile of packing material in the same area where the weapons were received. After recovery of the weapon, Applicant was again questioned, and admitted that he had falsified his original statements, as he had never actually visually verified receipt of all of the weapons. In June 2011 Applicant received a show cause decision that he would involuntarily separated from the US Army. In December 2011 Applicant resigned from the Army after he was told that he would be involuntarily separated for cause following this incident. He left active duty with an honorable discharge. (Government Exhibit 3.)

Paragraph 2 (Guideline F - Financial Considerations.) The Government alleges that the Applicant is ineligible for a security clearance because he is financially overextended and at risk to engage in illegal acts to generate funds.

Applicant admits each of the allegations set forth in the SOR under this guideline, except 2.g., which he disputes. Applicant is indebted to seven creditors totaling approximately \$10,316. Credit Reports of the Applicant dated March 2, 2013; April 1, 2014; and March 13, 2015, confirm this indebtedness. (Government Exhibits 4, 5 and 6.) Applicant attributes his debt to a one year period of unemployment following his separation from the Army in 2011. He states that he has not been wise concerning his finances in the past. He plans to be more financially responsible now and he intends to pay his delinquent debts. (Government Exhibit 1.)

Each of the delinquent debts set forth in the SOR remain outstanding. The record does not provide sufficient detail concerning his income and his expenses to determine whether he is able to pay his debts. Applicant currently earns \$15.63 per hour. He states that 40-45% of his bi-weekly paycheck goes toward medical insurance/taxes and deductions. He states that he has little discretionary income at this time. He plans to have some when his car is paid off in March 2015, and when he receives the monies from his 2014 income tax return. (Government Exhibit 1.)

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 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.(b) deliberately providing false information or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;

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, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

16.(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of 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. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;

16.(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing

Conditions that could mitigate security concerns:

None.

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

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.

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;
- 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, a security clearance 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 such access may be involved in instances of personal conduct and 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 a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in a pattern of rule violations indicative of poor personal conduct (Guideline E), 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.

Applicant's personal conduct under Guideline E is very troubling. As an officer in the United States Army, Applicant was derelict in his duties and then deliberately lied to his commanding officer and to the Army criminal investigators during an official investigation. These violations go directly to his integrity and trustworthiness. It is noted that these offenses occurred in 2009, some six years ago. Despite this, Applicant has no excuse or reasonable explanation for his deceit. He does not know why he lied to cover up his failure to visually inspect and verify the rifles shipped to his unit. Whether he was being lazy and simply did not want his commanding officer to know that he was not doing his job is incomprehensible. This deliberate attempt to falsify information is a violation of Title 18, United States Code, Section 1001, a felony. The Applicant acknowledges his mistakes, and indicates that he has changed his ways. This conduct, however, is so egregious that it cannot be understood. Applicant was an officer in the military, entrusted with not only the national secrets, but with the lives of his subordinates, when he committed these offenses. This conduct, which resulted in

his separation from the Army, does not suggest the high degree of judgment, reliability, or trustworthiness required of persons handling classified information.

Disqualifying Conditions 16.(b) *deliberately providing false information or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative*; 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, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information*; 16.(d) *credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of 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. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information, and* 16.(e) *personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing* apply. None of the mitigating conditions are applicable.

Turning to Applicant's financial instability under Guideline F. The Applicant remains indebted to each of the creditors in the SOR and it appears that he does not have the money available to pay his debts. His finances and credit rating are not in good standing. There is insufficient evidence of financial rehabilitation at this time. 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. 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. However, under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support 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 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 Paragraphs 1 and 2 of the Government's Statement of Reasons.

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.

Paragraph 2: For the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

Subpara. 2.c.: Against the Applicant.

Subpara. 2.d.: Against the Applicant.

Subpara. 2.e.: Against the Applicant.

Subpara. 2.f.: Against the Applicant.

Subpara. 2.g.: Against the Applicant.

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge