



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-04583

Appearances

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

January 28, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) dated April 25, 2014. (Government Exhibit 1.) On January 21, 2015, 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 March 27, 2015, 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 13, 2015. A notice of hearing was issued on August 12, 2015, scheduling the hearing for September 23, 2015. At the hearing the Government presented four exhibits, referred to as Government Exhibits 1 through 4. The Applicant presented no exhibits, however, he testified on his own behalf. The record remained open until close of business on October 10, 2015, to allow the Applicant to submit supporting documentation. Applicant failed to submit any

documentation. The official transcript (Tr.) was received on October 1, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 39 years old, and single with one child. He is one credit from receiving his Bachelor's degree in Business Management and Finance. He is employed with a defense contractor as a Project Manager 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.

Applicant has been employed on a full-time basis with his current employer since October 2000. Since 2002, he has held a security clearance and has never incurred a security violation. (Government Exhibit 1.) He was employee of year in 2007 and has been recognized for his other contributions on the job.

Applicant has a history of financial indebtedness. There are thirteen allegations of debt set forth in the SOR, which include his failure to file taxes, collection accounts, and judgments totaling in excess of \$220,000. He admitted allegation 1.a., failing to file his state and federal income tax returns, but denied the remaining allegations, claiming that he was a victim of identity theft and they are not his debts.

Applicant testified that in 2000, when he graduated from college, and had to start paying back his student loans, his financial problems began. (Tr. p. 19.) At that time, he moved back home, got a job, and started paying back some of his student loans. In 2006, he had moved up in the company, and earned enough to buy a house. He was able to hold on to the house until 2010, but by then the house had lost equity, Applicant could no longer afford the payments, and it was foreclosed upon. At that time, his mother became ill and lost her job. Applicant began financially supporting his mother and paying her medical bills and other expenses. He then got engaged to a woman with a child and he started helping her pay her expenses. It was at this time that Applicant fell behind on some of his financial obligations.

Credit reports of the Applicant dated May 1, 2014; June 29, 2015; and September 19, 2015, which includes information from all three credit reporting agencies, reflect that Applicant is indebted to each of the creditors set forth in the SOR. (Government Exhibits 2, 3, and 4.)

1.a., Applicant failed to file his state and federal income tax returns for tax years 2011 and 2012. He explained that he did not file because he did not have the money to pay the taxes. He recently borrowed from his 401(k) to have his returns filed. The state placed a \$3,000 levy on his payroll check to collect back taxes owed. Applicant contends that he hired a tax preparer who has prepared his tax returns and who intended on filing them on Friday after the hearing. (Tr. p. 23.) The record was left open to allow the Applicant to submit copies of these filings. Applicant failed to submit any documentation to show that these taxes have been filed. The Government motioned to amend the SOR to include tax years 2013 and 2014, both federal and state. (Tr. p. 23.) Applicant had no objection. (Tr. p. 54) Said motion was granted. (Tr. p. 55.)

According to the Applicant, in 2014, when he met with the investigator during his security clearance background investigation he first learned that there were delinquent debts on his credit report that were not his. (Tr. p. 19.) He states that to pursue the matter he filed an affidavit of security theft with the Federal Trade Commission on June 14, 2014. He also went to his local police department and filed a stolen identification complaint. (Tr. pp. 27-28.) Applicant states that he has been working with a credit repair company to assist in having these debts removed from his credit report.

In regard to the following allegations of debt, Applicant claims that the debt is not his debt, but were erroneously placed on his credit report as a result of identity theft. Allegations 1.b., in the amount of \$2,432; 1.d., in the amount of \$4,087; 1.e., in the amount of \$3,919; 1.f., in the amount of \$1,908; 1.g., in the amount of \$496; 1.h., in the amount of \$6,645; 1.i., in the amount of \$4,087; and 1.j., in the amount of \$21,224;

He contends that only the following allegations of debt are his own. Allegation 1.c., in the amount of \$3,657; 1.e., in the amount of \$3,919, and 1.f., \$1,908 are all related to the HOA fees he owed at the time his house was foreclosed upon. Allegation 1.k., was the delinquent second line of credit on the foreclosed home in the amount of \$88,993. Allegation 1.l., in the amount of \$39,259; and 1.m, in the amount of \$48,534 were his delinquent student loans. Applicant testified that he believes he owes about \$60,000 in student loans. Applicant stated that his student loan payments were initially too high for him to pay. He was then given 6 months of forbearance. His payments have been adjusted and he started making payments in September 2015. At the time of the hearing he had made one payment in the amount of \$200. (Tr. p. 35.)

As stated, the record was left until close of business on October 10, 2015 to allow the Applicant to submit documentary evidence to support his testimony. Applicant failed to provide any documentation in mitigation to corroborate his testimony.

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; and

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

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, 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 remains excessively indebted. Absent compelling documentary evidence that Applicant acted responsibly and in good faith to repay his financial obligations, or that he established a track record of repayment, or has a substantiated basis to dispute the legitimacy of the debt, he has failed to show sufficient mitigation under Guideline F.

In this case, Applicant failed to provide any documentary evidence to show that he was a victim of identity theft and that the debts listed in the SOR are not his own. He has also failed to show that he has filed his income tax returns in question. Simply because he was not aware of his debts does not mean he does not owe them. If he does not believe he owes them, he has the burden of proving that he does not owe them. At the present time, he remains delinquently indebted to all of the creditors set forth in the SOR, totaling approximately \$220,000. There is no evidence of any efforts to repay the debts, be it prior to or after receipt of the SOR. There is no evidence of even an attempt to pay the smallest of the debts, which is only \$496. In the absence of documentary evidence to show that Applicant has been able to attain some resolution on his delinquent debts and establish a track record of debt repayment, this concern must be decided against him in evaluating his suitability to have access to classified information.

Applicant's history of excessive indebtedness, without sufficient mitigation, demonstrates a pattern of unreliability and poor judgment. Applicant failed to provide proof of payment, receipts, or any documentation to demonstrate that he has, can, or will resolve his delinquent debts. There is nothing in the record to show that Applicant can live within his means. Without more, Applicant has failed to establish that he is fiscally responsible. Furthermore, there is no evidence that he has received credit counseling to help him set a budget and learn to live within it, or 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, and does not have a concrete understanding of his financial responsibilities. 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. Applicant has not demonstrated that he can properly handle his financial affairs or that he is fiscally responsible. His debts are significant. 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, 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. There is no evidence in the record to show that Applicant has done anything to resolve his debts. In fact, from what is presented, 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.
Subparas. 1.b.	Against the Applicant.
Subpara. 1.c.	Against the Applicant.
Subparas. 1.d.	Against the Applicant.
Subpara. 1.e.	Against the Applicant.
Subpara. 1.f.	Against the Applicant.
Subparas. 1.g.	Against the Applicant.
Subpara. 1.h.	Against the Applicant.
Subparas. 1.i.	Against the Applicant.
Subpara. 1.j.	Against the Applicant.
Subpara. 1.k.	Against the Applicant.

Subparas. 1.l. Against the Applicant.
Subpara. 1.m. 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