



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 14-06023
)
)
Applicant for Security Clearance)

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 June 30, 2014. (Government Exhibit 1.) On February 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 April 9, 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 six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant presented five exhibits, referred to as Applicant's Exhibits A through E, which were admitted without objection. He also testified on his own behalf. 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 42 years old, is separated, and in the process of divorce, and has three children. He has a high school diploma and an Associates Degree. He is employed with a defense contractor as a Product Trainer 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 a history of financial indebtedness. There are thirteen delinquent debts set forth in the SOR that total approximately \$45,000. Applicant admitted each of the allegations except 1.d., because the creditor has charged off the account; and 1.e., since he is paying the debt through wage garnishment. He has been employed on a full time basis with his current employer from October 2002 to November 2010, and then again from May 2011 through the present.

Credit reports of the Applicant dated July 8, 2004; July 11, 2014; February 10, 2015; June 29, 2015; and September 19, 2015, which includes information from all three credit reporting agencies, indicate that Applicant is indebted to each of the creditors set forth in the SOR. (Government Exhibits 2, 3, 4, 5 and 6.)

In August 1994, Applicant got married. In 1996, he filed for Chapter 7 Bankruptcy and discharged about \$13,000 in debt. (Tr. p. 44.) In 2006, he and his wife had twins. It was about this time that his wife, who had been earning about \$80,000 annually, lost her job. In 2008 they had a third child. This is when the financial challenges began. As time passed and spending continued, Applicant was unable to afford his lifestyle. Applicant was laid off of his job in November 2010. Applicant was rehired by his employer in May 2011. He and his wife separated in September 2012. She and the children moved out of state. The following thirteen debts became delinquent and owing:

1.a. A delinquent debt in the amount of \$5,505 remains owing. This was for two months of rent that Applicant failed to pay and was evicted. (Tr. P. 23-24.) 1.b. A delinquent debt owed to a cable company in the amount of \$148 remains owing. 1.c. A delinquent medical bill in the amount of \$26 remains owing. (Tr. pp. 25-27.) 1.d. A delinquent debt to a bank in the amount of \$5,704 was charged off by the creditor. (Tr.

pp. 27-28 and 38.) 1.e. A delinquent debt owed to a car dealership in the amount of \$26,943 remains owing. In 2008 Applicant purchased a Land Rover after his third child was born. The payments were \$1,400 a month and they could not afford them. The car was repossessed in September 2010, and Applicant now owes the deficiency judgment. Applicant has reduced the debt down from \$31,000 to \$26,000 over the past year. The debt is being paid through wage garnishment of \$150 monthly from his payroll account. (Applicant's Exhibit B.) 1.f. A delinquent medical bill in the amount of \$315 remains owing. (Tr. pp. 34-35.) 1.g. A delinquent medical bill in the amount of \$1,499 remains owing. (Tr. pp. 34-35.) 1.h. A delinquent medical bill in the amount of \$65 remains owing. (Tr. pp. 34-35.) 1.i. A delinquent electric bill in the amount of \$516 remains owing. (Tr. pp. 36-37.) 1.j. A delinquent medical bill in the amount of \$1,245 remains owing. 1.k. A delinquent medical bill in the amount of \$2,231 remains owing. 1.l. A delinquent medical bill in the amount of \$429 remains owing. 1.m. A delinquent medical bill in the amount of \$65 remains owing.

Applicant testified that he intends to hire a debt relief company for purposes of assisting him in consolidating his debts and rolling them into one payment that he can afford. (Tr. p. 40.) Applicant also continues to support his wife and children with 70% of his income each pay period. They remain separated, although no divorce papers have been filed in court.

Applicant's performance reviews for the period from January 2012 through December 31, 2015, are favorable. His ratings are that he always either "achieves expectations" or "consistently achieves expectations". (Applicant's Exhibits C, D and E)

A letter from the Applicant's wife corroborates his testimony. She indicates that they are in the middle of an amenable divorce. She states that the last few years have been financially difficult. She does not want their failed relationship and associated financial breakdown to keep him from doing what he loves at his job. She further states that since September 2012, Applicant has been supporting her and their three children through direct deposit bi-weekly payments of \$1,350 from his bank account without a court order. She believes Applicant to be responsible and trustworthy.

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:

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 and his wife separated in 2012 and are in the process of filing for divorce. Over the years, they have had many financial problems. They filed for Chapter 7 Bankruptcy protection in 1996. Since then, Applicant has worked and tried to be the sole household provider, but his income has simply not been enough to cover his family and their expenses. Each of the debts set forth in the SOR, except one, have not been addressed in any fashion and remain owing. The debt for the Land Rover is being paid through wage garnishments. The remaining twelve debts are outstanding. Applicant intends to hire a debt consolidation company for assistance, but he has not done that yet. He has not acted responsibly and reasonably under the circumstances. At this point, Applicant has a long way to go before he can be relied upon by the Government. Presently, he remains delinquently indebted to all of the

creditors set forth in the SOR, totaling at least about \$40,000. There is no evidence of any efforts to repay these 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 \$26.

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, the 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*; and 19.(c) *a history of not meeting financial obligations*, 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.	For 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