



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 15-00284
)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Department Counsel
For Applicant: *Pro se*

May 31, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on April 27, 2012. (Government Exhibit 4.) On July 25, 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 Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on August 12, 2015, 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 or about October 27, 2015. Applicant received the FORM on November 5, 2015. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant did not submit a reply to the FORM. This case was assigned to the undersigned on February 4, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 40 years old, and is not married. He has a high school diploma and some college. He is employed by a defense contractor as a Consultant. He 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.

There are five delinquent debts set forth in the SOR totaling approximately \$13,500. Applicant admitted allegations 1.a., and 1.b., set forth in the SOR under this guideline. He denied allegations 1c, 1d., and 1e., stating that one is unknown and two have been paid. Credit reports of the Applicant dated May 16, 2012; October 30, 2014; and June 4, 2015, which include information from all three credit reporting agencies, indicate that Applicant is indebted to each of the creditors listed in the SOR. (Government Exhibits 6, 7, and 8.) Applicant has been working for his current employer since May 2011.

Applicant attributes the majority of his financial problems to his alcohol use. He admits that he is an alcoholic who stopped drinking in 2011, and that he has had numerous alcohol related incidents. He states that all of his delinquent medical accounts, including two that are listed in the SOR under allegations 1.a., and 1b., are directly related to his hospital visits for his alcohol abuse. (Government Exhibit 5.) On one occasion he had to go to the hospital because he was having a seizure due to alcohol withdrawal; he did not have health insurance at the time. (Government Exhibit 3.)

The following debts became delinquent and owing:

1.a., a delinquent debt owed to a creditor for a medical account that was placed for collection in the approximate amount of \$5,216. Applicant admits the debt. He states that he is making monthly payments of \$300 a month to cover this account and the account referenced in 1.b. (Applicant's Answer to SOR.)

1.b., a delinquent debt owed to a creditor for a medical account that was placed for collection in the approximate amount of \$4,208. Applicant admits the debt. He states that he is making monthly payments of \$300 a month to cover this account and the account referenced in 1.a. (Applicant's Answer to SOR.)

1.c., a delinquent debt owed to a creditor for a medical account that was placed for collection in the approximate amount of \$3,575. Applicant denies the debt. He can

find no record of the account and it does not reflect as delinquent on his most recent credit report. (Applicant's Answer to SOR.)

1.d., a delinquent debt owed to a creditor for a medical account that was placed for collection in the amount of \$349. Applicant denies the debt. He claims that he has contacted the creditor and been told that the account has been paid in full. (Applicant's Answer to SOR.)

1.e., a delinquent debt owed to a creditor for an account that was placed for collection in the approximate amount of \$507. Applicant denies the debt. He claims that he has contacted the creditor and been told that the account has been paid in full. (Applicant's Answer to SOR.)

Applicant claims that in the past year, he has acquired 4 credit cards with a total available credit limit of \$9,000. He states that he uses them sparingly and pays them down to zero each month. He further states that his credit rating is consistently rising, and that he has not incurred any new debt that he cannot pay. (Applicant's Answer to SOR.)

Applicant has failed to respond to the FORM. There is no documentary evidence in the record to show that Applicant has done anything to address any of the delinquent debts set forth in the SOR, even the smallest debt owed in the amount of \$349. Simply by stating that he paid the debt, does not prove that he has. He must submit receipts, letters from the creditors confirming a zero balance or some documentation to support his contentions. Absent compelling documentary evidence that Applicant has acted responsibly and in good faith to repay his financial obligations, or established a track record of repayment, or otherwise has a substantiated basis to dispute the legitimacy of the delinquent debt, the allegations in the SOR have not been mitigated. Based upon the evidence presented, each of the delinquent debts listed in the SOR remain owing.

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.

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 that is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order adverse to an applicant 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 Applicant has been financially irresponsible (Guideline F). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of Applicant. Because of the scope and nature of Applicant’s conduct, I conclude there is a nexus or connection with his security clearance eligibility.

The evidence presented shows that Applicant incurred a number of delinquent debts, most of which were medical bills related to his alcohol problem. He states that he is making monthly payments toward two of the debts and that the others have been paid in full. However, there is no documentary evidence in the record to support the Applicant’s contentions. Without compelling documentation showing that Applicant has made financial arrangements and followed these arrangements to meet his past-due financial obligations, or in fact paid off his delinquent debts in full, he has not shown the requisite good judgment, reliability, or trustworthiness that is necessary in order to be eligible for access to classified information.

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. By failing to provide documentary evidence to support his contentions, it cannot be said that

Applicant has not made a good-faith effort to satisfy his delinquent debts. In fact, he has shown that he is not financially responsible.

I have also considered the “whole-person concept” in evaluating Applicant’s eligibility for access to classified information. From the evidence presented, Applicant has not demonstrated a pattern of financial responsibility, as he has not addressed any of the delinquent debts set forth in the SOR. He has not shown that he is or has been reasonably, responsibly, or prudently addressing his financial situation. It appears that he has simply ignored his delinquent debts. In fact, he has not demonstrated that he can properly handle his financial affairs.

Under the particular facts of this case, the totality of the conduct forth above, when viewed under all of the guidelines as a whole, support a whole-person assessment of poor judgement, untrustworthiness, unreliability, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

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. Applicant has not met his burden of proving that he is worthy of a security clearance. Overall, based upon the seriousness of the conduct outlined here, the Applicant has not demonstrated that he is sufficiently trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

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 failed to 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 E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1:		Against Applicant.
Subpara.	1.a.	Against Applicant.
Subpara.	1.b.	Against Applicant.
Subpara.	1.c.	Against Applicant.
Subpara.	1.d.	Against Applicant.
Subpara.	1.e.	Against 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 Applicant. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge