



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 15-01830
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin R. Dorsey, Department Counsel
For Applicant: *Pro se*

March 17, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on August 13, 2012. (Government Exhibit 3.) On August 27, 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 September 17, 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 November 3, 2015. Applicant received the FORM on November 10, 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 March 2, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 57 years old, and is divorced. He obtained a GED in 1976. He is employed for a defense contractor as a driver. 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.

Applicant admitted allegation 1.a., and denied allegations 1.b., and 1.c. under this guideline. Credit reports of the Applicant dated September 6, 2012; and February 5, 2015, which includes information from all three credit reporting agencies, indicates that Applicant is indebted to the state for two state tax liens totaling approximately \$5,000, listed in the SOR. (Government Exhibits 5 and 6.)

Applicant failed to file his Federal and state tax income tax returns for tax years 2010 and 2011. Two state tax liens were entered against him in 2013, one in the amount of \$4,798, the other in the amount of \$133.

Applicant began working for his current employer in October 2010. He also mentioned that he went through a divorce in 2010, and although his ex-wife was to pay half of the expenses for the children, among other requirements, she failed to do so. She was diagnosed with cancer and passed away. He claims that this is a factor as to why he has incurred tax problems. He failed to explained why this impacted his tax liability. He states that he has spent a significant amount of legal fees in an effort to resolve his tax issues. He attributes the fact that he has been living and working in remote areas, sometimes 50 to 80 hours per week, with little or no phone or internet service. He has had no one to go thorough his paperwork. Applicant believes that he has met and satisfied his tax liabilities to the state.

In his answer to the SOR, Applicant fails to address whether he has now filed the aforementioned income tax returns, as the record remains void of these documents. Although he claims that he had paid the state tax liens, he fails to provide any documentary evidence to show that he had resolved these debts.

Other than his statements, there is no evidence in the record to corroborate that Applicant has done anything to address the issues of concern in the SOR. Based upon the evidence presented, the allegations in the SOR remain unaddressed by the Applicant.

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;

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;
- 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 failed to file his income tax returns for tax years 2010 and 2011. He also incurred two state tax liens for back taxes owed. He states that his divorce, his long work hours on the job, and its remote locations kept him from resolving his tax problems. He has not provided sufficient information about his past circumstances to invoke any of the mitigation factors. Furthermore, he has not provided any documents to prove that he has filed the income tax returns in question or paid the outstanding tax liens. Without compelling documentation showing that Applicant has filed the income tax returns in question and either paid off or made financial arrangements to meet his past-due financial obligations, 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 the particular circumstances of this case, Applicant has not met his burden of proving that he is worthy of a security clearance. He does not have a concrete understanding of his financial responsibilities and has not sufficiently addressed the allegations set forth in the SOR. 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. Thus, Applicant has not demonstrated that he can properly handle his financial affairs. He must demonstrate a history and pattern of financial responsibility, including filing and paying his taxes. 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. Applicant has not made a good-faith effort to satisfy his delinquent debts or file his income taxes. In fact, he has shown that he is not financially responsible. Accordingly, I find against 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, 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 failure to file his income tax returns, 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.

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