



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



In the matter of:)
)
-----) ISCR Case No. 14-04290
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, 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 January 28, 2014. (Government Exhibit 2.) On January 20, 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)¹ 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 in writing on May 28, 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 September 3, 2015. Applicant received the FORM on September 14, 2015. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days

¹ There are typographical errors in the alphabetical order of the allegations in the SOR. The alphabetical order has been corrected to reflect thirteen allegations under Guideline F, beginning with allegation 1.a., and continuing through 1.m.

of receipt. Applicant did not submit a response to the FORM. This case was assigned to the undersigned on November 10, 2015. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 39 years old, and single. He has a high school diploma and a culinary certificate. He is employed with a defense contractor as a janitor 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.

There are thirteen delinquent debts set forth in the SOR totaling approximately \$20,000. Applicant denied allegations 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., and 1.j., under this guideline. He admits allegations 1.i., 1.k., 1.l., and 1.m. Credit reports of Applicant dated February 26, 2014; and August 28, 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 4 and 5.) Applicant has been employed with his current employer since December 2013.

During his security clearance background investigation, Applicant was asked if he had any delinquent debts. Applicant stated, "NO", and was then confronted with his credit report that revealed the delinquent debts set forth in the SOR. Applicant professes little knowledge of his financial record and states that he has disputed many of the debts. (Government Exhibit 3.) He has provided no documentation to support that he has done anything in regard to the debts, whether it be to dispute them, set up a payment plan, or pay them. Applicant failed to submit any documentation to establish that he has acted responsibly to address his delinquent debts. The following debts remain owing:

1.a., a debt owed to a creditor for an account that was placed for collection in the approximate amount of \$55. Applicant states that this account is in dispute.

1.b., a debt owed to a creditor for an account that was placed for collection in the approximate amount of \$417. Applicant states that this account is in dispute.

1.c., a debt owed to a creditor for an account that was placed for collection in the approximate amount of \$1,118. Applicant states that he has no knowledge of the account.

1.d., a debt owed to a creditor for an account that was placed for collection in the approximate amount of \$69. Applicant states that this account is in dispute.

1.e., a debt owed to a creditor for an account that was placed for collection in the approximate amount of \$140. Applicant states that this account is in dispute.

1.f., a debt owed to a creditor for an account that was placed for collection in the approximate amount of \$1,210. Applicant states that this account is in dispute.

1.g., a debt owed to a creditor for an account that was placed for collection in the approximate amount of \$348. Applicant states that this account is in dispute.

1.h., a debt owed to a creditor for an account that was placed for collection in the approximate amount of \$6,310. Applicant states that this account is in dispute.

1.i., a debt owed to a creditor for an account that was placed for collection in the approximate amount of \$418. Applicant states that he has contacted the creditor and intends to pay the debt.

1.j., a debt owed to a creditor for an account that was placed for collection in the approximate amount of \$478. Applicant states that this account is in dispute.

1.k., a debt owed to a creditor for an account that was placed for collection in the approximate amount of \$735. Applicant states that he has contacted the creditor and was told to pay as he can.

1.j., a debt owed to a creditor for an account that was placed for collection in the approximate amount of \$556. Applicant states that this account is in dispute.

1.k., a debt owed to a creditor for an account that was placed for collection in the approximate amount of \$13,772. Applicant was cosigner on a car loan account. The car was repossessed for failure to pay the loan. Applicant states that he owes the creditor no money, as the account is in dispute. (See Applicant's Answer to SOR)

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he has engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness 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.

Applicant completed an Electronic Questionnaire for Investigations Processing dated January 28, 2014, and answered, "NO," to a series of questions concerning his police record. (Government Exhibit 2.) Section 22 asked, (a) "Have you EVER been convicted in any court of the United States of a crime, sentenced to imprisonment for a term exceeding 1 year for that crime, and incarcerated as a result of that sentence for

not less than 1 year? (b) Have you EVER been charged with any felony offense? (c) Have you EVER been convicted of an offense involving domestic violence or a crime of violence against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common? (d) Have you EVER been charged with an offense involving firearms or explosive? (e) Have you EVER been charged with an offense involving alcohol or drugs.” (Emphasis in original.) Applicant answered, “NO,” to each question. (Government Exhibit 2.) These were false responses. He deliberately omitted that he had been charged with Trespassing, a 1st degree felony in April 2004. (Government Exhibit 3.)

Section 26 of the same questionnaire also asked, “In the past seven years, (a) have you defaulted on any type of loan? (b) have you had bills or debts turned over to a collection agency? (c) have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? (d) are you or have you been currently over 120 days delinquent on any debt?” The Applicant answered, “NO,” to the question. This was a false response. He deliberately failed to list the delinquent debts set forth in the SOR above. (Government Exhibit 1.)

Applicant states that he was confused by the question regarding his police record. In regard to the questions regarding his financial history he states that he never owned a credit card. The questions on the application are clear and simple. Applicant knew or should have known how to answer them correctly. He did not. Thus, it cannot be said that he has shown the requisite good judgment, reliability, and trustworthiness to meet the eligibility requirements for access to classified information.

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.

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.

Condition that could raise a security concern:

16.(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

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 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 and dishonesty, which demonstrate 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 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 indebted to each of the creditors listed in the SOR in an amount totaling approximately \$20,000. He claims that the debts are in dispute, but he provides no documentary evidence to support this claim. This history of excessive indebtedness demonstrates a pattern of unreliability, and poor judgment. He has not provided any documentary evidence to show that he had done anything with respect to resolving these debts. 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. Without more, Applicant has failed to establish that he is financially responsible.

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 his delinquent debts 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. Applicant has not demonstrated that he can properly handle his financial affairs. His indebtedness is significant. Assuming that he demonstrates a history and pattern of financial 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. None of the mitigating conditions are applicable. Applicant has been irresponsible. 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).

In regard to his personal conduct, Applicant was not truthful and candid with the Government on his security clearance application when he intentionally omitted relevant information concerning his police record and his finances. At the time he completed the application in 2013, he knew or should have known that he had a large number of delinquent debts, within the past seven years. He also should have known to reveal the Felony Trespassing conviction in April 2004. The only reasonable conclusion for not revealing the truth concerning his delinquent debts and his police record was that he did not want the Government to know about them. There is no excuse for this misconduct.

Under Guideline E (Personal Conduct), Disqualifying Condition 16.(a) *deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary*

responsibilities applies. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline E (Personal Conduct).

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, dishonesty 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 Paragraphs 1 and 2 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.
Subpara.	1.b.	Against the Applicant.
Subpara.	1.c.	Against the Applicant.
Subpara.	1.d.	Against the Applicant.
Subpara.	1.e.	Against the Applicant.
Subpara.	1.f.	Against the Applicant.
Subpara.	1.g.	Against the Applicant.
Subpara.	1.h.	Against the Applicant.
Subpara.	1.i.	Against the Applicant.
Subpara.	1.j.	Against the Applicant.
Subpara.	1.k.	Against the Applicant.
Subpara.	1.l.	Against the Applicant.
Subpara.	1.m.	Against the Applicant.
Paragraph 2:		Against the Applicant.
Subpara.	2.a.	Against the Applicant.
Subpara.	2.b.	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 Applicant. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge