



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-05489

Appearances

For Government: Julie R. Mendez, Department Counsel
For Applicant: *Pro se*

October 29, 2015

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) dated May 29, 2013. (Government Exhibit 3.) On February 2, 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 in writing on February 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 July 15, 2015. Applicant received the FORM on July 24, 2015. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant submitted a response to the FORM, consisting of four documents, referred to as Applicant's Post-Hearing Exhibits 1 through 4. Department Counsel had no objection, and the documents were admitted into evidence. This case was assigned to

the undersigned on September 3, 2015. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 67 years old, and married with four adult children. He has both a Bachelor's and Master's degree. He is employed with a defense contractor as a Managing Director 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 served in the United States Army as an officer from July 1965 to September 1985. During his time in the military, he held a security clearance. He has been employed on a full time basis with his current employer since 2003.

Applicant has a history of financial indebtedness. A federal tax lien was filed against him in 2011 for unpaid taxes in the amount of approximately \$159,000. Applicant admits the debt. He explained that the lien is for income taxes that he owes for tax years 2008 and 2009. The lien has actually been placed on his daughter's property that he co-signed for, but related to his personal tax liability. (Government Exhibit 2.) Applicant states that upon learning of the tax lien he filed a Lien Release Request in June 2013 and has yet to receive a response from the Internal Revenue Service (IRS) on the issue.

In January 2008, Applicant took ownership in his company and his pay structure changed. Prior to this time, he had been an employee of the company. As an employee, he received a regular pay check. When he took ownership of the company, his compensation came from draws from the company profits. He was issued a draw from the officer manager every two weeks. Applicant did not realize that taxes were not being deducted from these draws until he prepared his tax return in 2009. By mid 2009, the recession had impacted his company, causing government contract cutbacks, and he did not have the money to pay his outstanding Federal taxes.

Applicant states that he filed an Offer in Compromise with the IRS sometime in 2011, but due to delays from the IRS, initially rejecting his first offer and taking long periods of time to respond, he has not been able to make progress on his past-due taxes. Applicant submitted a second Offer in Compromise dated in April 2014. (Applicant's Post-Hearing Exhibit 3.) Applicant states that he has not yet filed his 2013

and 2014 income taxes due to the ongoing process regarding his back taxes for 2008 and 2009. He claims that he is sending the IRS \$1,000 per month while the IRS is considering the offer. Applicant's Post-Hearing Exhibit 2 include a document entitled, "Account Quick Report," which appears to be a ledger or list of sorts from his employer that shows he directed payments of \$1,000 a month to the IRS since April 2014. The evidence is somewhat mixed as to whether Applicant is voluntarily sending \$1,000 to the IRS to go toward his back taxes, as he indicates in his Answer to the FORM, or whether it is a condition of the Offer in Compromise, as he indicates in his Response to the FORM. In either case, Applicant claims that has already made a total of \$17,000 in payments to the IRS. (Applicant's Post-Hearing Exhibit 1.)

Applicant also claims that the amount of the tax lien is inaccurate. He states that his Offer in Compromise has been shuffled around from one IRS office to the next due to a reduction in the government budget. Applicant states that he is willing to settle the debt but the terms and conditions of the offer have not been accepted at this stage. He claims that in the meantime, the debt continues to be reduced by tax refunds and monthly payments. He states that the conditions of the Offer in Compromise requires that a \$1,000 payment be made to the IRS while they are reviewing the offer. (Applicant's Post-Hearing Exhibit 1.) Applicant states that the IRS contacted him by telephone in December 2014 and told him that they were considering his most recent offer, but he has not heard from them since then. Applicant's credit report dated September 30, 2014, confirms that Applicant is indebted to the IRS as alleged in the SOR. (Government Exhibit 4.)

(Guideline E - Personal Conduct). The Government alleges that Applicant is ineligible for a security clearance because he has engaged in conduct involving questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations.

Applicant executed an Electronic Questionnaire for Investigations Processing (eQIP) dated May 29, 2013. (Government Exhibit 3.) Question 26 asked him if in the past seven years he had failed to file or pay federal, state or other taxes when required by law or ordinance. Applicant answered, "NO." He failed to disclose that he owed taxes to the Federal government. That same question also asks if in the past seven years, has he had a lien placed against his property for failing to pay taxes or other debts. Applicant answered, "NO." Again, he was not truthful. He failed to disclose the lien that was filed against him in 2011.

Applicant claims that he had no knowledge of the lien until 2013 when his daughter tried to refinance the property. He clearly knew he owed taxes to the Government since he had earlier submitted an Offer of Compromise hoping to come to some settlement amount.

Applicant states that he was not deliberately trying to hide his tax liability from the Government. He states that he was unaware of the tax lien until June 2013, a month after executing the security clearance application. This explanation is not convincing.

The security clearance application not only asks about tax liens, it asks if he failed to pay taxes that he owed within the last seven years. Clearly Applicant failed to pay Federal income taxes for tax years 2008 and 2009, a fact which that he should have disclosed.

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 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 and dishonesty, 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 is indebted for Federal back taxes in the amount of approximately \$159,000. Applicant claims that he has made various attempts to resolve the debt without success. Applicant provided a document entitled, "Account Quick Report," which appears to be a ledger or list of sorts from his employer that shows he directed payments of \$1,000 a month to the IRS since April 2014. There is no evidence in the record to show that these payments were ever received or accepted by the IRS for payment of this debt. Assuming that these payments were sent and received by the IRS, Applicant has paid the IRS about \$20,000. In this case, Applicant has acted responsibly and in good faith to repay this financial obligation, however, he has still not resolved the matter with the IRS. In the absence of documentary evidence submitted in response to this FORM 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. Furthermore, the fact that the Applicant has simply waited for the IRS to respond after numerous delays over the course of several years in an effort to resolve the debt should by now indicate to him that he should use a different method of resolving the matter. In this case, however, 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. There is simply insufficient documentary evidence in the record to show sufficient mitigation under Guideline F.

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 this case, none of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline F (Financial Considerations)

Equally as troubling in this case is the fact that Applicant was untruthful when he completed the security clearance application. Applicant failed to disclose the back taxes he owes to the IRS as well as the lien that was filed against him in 2011 that was placed on his daughter's property. It is possible he may not have known about the lien, but it is not reasonable to believe that he made a mistake about the taxes. Applicant has held a security clearance since 1965, and has therefore completed numerous security clearance applications over his career. He has been formally educated with both a bachelor's and master's degree, and the tax question on the security clearance application is clear and simple. Applicant intentionally omitted his tax liability because he knew it would have an adverse effect on his ability to hold a security clearance.

The Government relies on the representations of its defense contractors and must be able to trust them in every instance. Applicant made no prompt, good-faith effort to correct his mistake. Applicant cannot at this time be deemed sufficiently trustworthy. In fact, he has demonstrated unreliability and untrustworthiness. Under the particular facts of this case, his poor personal conduct is considered a significant security risk, which prohibits a favorable determination in this case. 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.

Under the particular circumstances of this case, Applicant has not met his burden of proving that he is worthy of a security clearance. 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.

I have considered all of the evidence presented. It does not mitigate the negative effects of his history of financial indebtedness and dishonesty on his security clearance application, 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.

- Paragraph 2: Against the Applicant.
 - Subpara. 2.a. 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