



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 15-00561
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, 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 May 21, 2014. (Government Exhibit 3.) On August 6, 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 October 21, 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 November 18, 2015. Applicant received the FORM on December 9, 2015. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant did not submit a response to the FORM. This case was assigned to the undersigned on April 1, 2016. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 61 years old, and married with three adult children. He has a high school diploma. He is employed with a defense contractor as a Coating Fabricator 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 six delinquent debts set forth in the SOR totaling approximately \$17,700. Applicant admitted allegations, 1.b., 1.d., and 1.f. He denies allegations 1.a., 1.c., and 1.e., with some explanations under this guideline. Credit reports of Applicant dated January 2, 2015; and July 13, 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 5 and 6.) Applicant has been employed with his current employer since July 1978. He was granted a security clearance in July 2009. (Government Exhibit 3.)

Applicant explained that for a period, he and his wife tried to provide financial assistance to their children, which caused him to fall behind on their own bills. His daughter has some health issues, and their son went through a nasty divorce.

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 no knowledge of his financial record and states that his wife handles the finances in the family. (Government Exhibit 4.) 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. Thus, according to the Applicant's credit reports in evidence, the following debts remain owing:

1.a., a debt owed to a creditor for an account that was charged off in the approximate amount of \$318. Applicant contends that the debt was paid in full but provides no documentation to support this contention.

1.b., a debt owed to a creditor for a medical account in the approximate amount of \$151. Applicant claims that this account is in the process of being paid, but provides no documentation to support this claim.

1.c., a debt owed to a state creditor for a tax lien entered against the Applicant in the approximate amount of \$11,590. Applicant claims the debt was paid in full. He states that he recently learned that he must go down to town hall and get a copy of the original lien and forward that to the state to have them sign off on the lien. He plans to do this.

1.d., a debt owed to a creditor for a medical judgement filed against the Applicant in the approximate amount of \$775. Applicant claims that this account is in the process of being paid, but provides no documentation to support this claim.

1.e., a debt owed to a creditor for an account that was charged off in the approximate amount of \$4,862. Applicant claims the account is not delinquent. He plans to send a letter to the credit reporting agencies to have it removed from his report. There is no documentary evidence in the record to support this contention.

1.f., a debt owed to a creditor for a medical account that was placed for collection in the approximate amount of \$5.00. Applicant claims that this account is in the process of being paid, but provides no documentation to support this claim.

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 May 21, 2014, and answered, "NO," to a series of questions concerning his financial record. Section 26 asked, "In the past seven years, have you failed to file or pay Federal, state or other taxes when required by law or ordinance?" The Applicant answered, "NO," to the question. This was a false response. He deliberately failed to disclose the Federal Tax lien that was placed against him in 2010 in the approximate amount of \$26,617 for failing to pay his taxes. (Government Exhibit 3.)

Section 26 of the same questionnaire also asked, "In the past seven years, have you been delinquent on alimony or child support payments; have you had any judgments entered against you; have you had a lien placed against your property for failing to pay taxes or other debts; and are you currently delinquent on any Federal debt?" The Applicant answered, "NO," to the questions. (Government Exhibit 3.) This was a false response. Applicant deliberately failed to disclose both the tax lien and the judgment set forth in 1.c. and 1.d of the SOR.

Section 26 also asked "In the past seven years have you had any possessions voluntarily or involuntarily repossessed or foreclosed; have you defaulted on any type of loan; have you had bills or debts turned over to a collection agency; have you had an account or credit card suspended; charged off, or cancelled for failing to pay as agreed; were you ever evicted for non-payment; have you had your wages, benefits or assets

garnished or attached for any reason; have you been over 120 days delinquent on any debt not previously entered; are you currently over 120 days delinquent on any debt?" The Applicant answered, "NO," to the questions. (Government Exhibit 3.) This was a false response. Applicant deliberately failed to disclose his delinquent debts set forth in 1.a., 1.b., 1.e., and 1.f. of the SOR.

Applicant states that he did not intentionally fail to list his various creditors on his security clearance application and that his failure to list these debts was due to a lack of understanding as to the meaning of the financial questions on the application. He goes on to say that he was intimidated by the security clearance process and may have misunderstood the question. (See Applicant's Answer to SOR.) The questions on the application regarding his financial history 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) and dishonest (Guideline E). 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 \$17,700. He claims that he has paid some of the debt and others are in the process of being paid, however, he has failed to provide any documentation which supports his assertions. Without this evidence, Applicant's history of excessive indebtedness demonstrates a pattern of unreliability, and poor judgment. In fact, 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. The record is void of mitigation, and 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. 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 financial record. At the time he completed the application in 2014, he knew or should have known that he had a number of delinquent debts, within the past seven years. Even though his wife may handle the finances, he must be aware of his financial standing at all times. The only reasonable conclusion for not revealing the truth concerning his delinquent debts 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.
Paragraph 2:		Against the Applicant.
Subpara.	2.a.	Against the Applicant.
Subpara.	2.b.	Against the Applicant.
Subpara.	2.c.	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