



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 14-00014  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Department Counsel  
For Applicant: *Pro se*

August 29, 2014

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (E-QIP) on November 16, 2009. (Government Exhibit 1.) On April 7, 2014, 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 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.

The Applicant responded to the SOR on April 30, 2014, and he requested an administrative hearing before a Defense Office of Hearings and Appeals Administrative Judge. This case was assigned to the undersigned Administrative Judge on May 29, 2014. A notice of hearing was issued on May 27, 2014, and the hearing was scheduled for June 11, 2014. At the hearing the Government presented eight exhibits, referred to as Government Exhibits 1 through 8, which were admitted without objection. The Applicant presented four exhibits, referred to as Applicant's Exhibits A through D, which were also admitted into evidence without objection. He also testified on his own behalf. The record remained open until close of business on June 17, 2014, to allow the

Applicant to submit additional documentation. The Applicant submitted sixteen Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits 1 through 16, which were admitted without objection. The official transcript (Tr.) was received on June 19, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **FINDINGS OF FACT**

The Applicant is 53 years old and married. He has a Bachelor's degree in Information Technology and holds the position of Senior Consultant for a defense contractor. He is seeking to obtain a security clearance in connection with this employment.

The Government opposes the 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 the Applicant is ineligible for clearance because he is financially overextended and at risk of having to engage in illegal acts to generate funds.

The Applicant admitted each of the allegations set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated November 24, 2009; August 27, 2013; March 18, 2014; May 19, 2014, and June 9, 2014, reflect that at one time Applicant was indebted for each of the debts set forth in the SOR, in an amount totaling in excess of \$150,000. (Government Exhibits 4, 5, 6, 7 and 8.)

Applicant served honorably on active duty in the United States Navy for 23 years, from 1984 to 2007. During his stellar military career he underwent numerous deployments and received many awards and commendations for his service. (Applicant's Post-Hearing Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13.) He also held a security clearance without issue. He has been employed as a civilian for the past seven years and with his current employer since December 2014.

In 2006 Applicant and his wife were gainfully employed, and looking for an investment to bolster their retirement. That same year, they learned of an out-of-state investment opportunity, and they decided to take advantage of it. They invested between \$10,000 and \$20,000 of their money to purchase three out-of-state rental properties, namely single-family homes, from a company. This company offered, as a packaged deal, to provide property management, maintenance services, and would ensure that the properties were rented at all times, or they would cover the rent for the time the property was not occupied by a tenant. They would also ensure that Applicant received payments from all rents.

In 2007 Applicant's wife lost her job. One of the two properties had a major fire that caused considerable damage. Applicant also started receiving notices of eviction on the properties. Following this, the management company simply stopped doing the job they had promised. Applicant did not receive any rents for about six months and was unable afford the mortgages himself. He got no help from the management company. This eventually led to both properties going into foreclosure.

Applicant became delinquently indebted to a bank for two mortgages, one in the amount of \$72,358.18; and the other for \$67,517.86. Applicant testified that the debts were cancelled by the bank in 2010, as he was issued a Form 1099-A and a Form 1099-C. (Applicant's Exhibits B and C.) These were filed with his 2010 tax return, and he paid the taxes that were assessed. (See Applicant's Exhibit D, Applicant's 2010 state income tax return that includes the Form 1099-C.) Applicant further testified that the property with the loan amount of \$72,358.18 was sold by the lender at a profit that generated a Form 1099-A. Since it was sold for a profit, Applicant had no tax liability. The other property with the loan amount of \$67,517.86 was sold by the lender for a loss that generated a Form 1099-C, which is a cancellation of debt. The Government submitted no evidence to the contrary.

Applicant also became delinquently indebted for credit card debt in the amount of \$8,292. Applicant testified that he used the credit card to pay for financial counseling that he thought could assist in saving the properties. Applicant intended on paying the debt and was working to set up a payment arrangement. Instead, the lender threatened to garnish his wages, which would have effected his ability to pay his other bills, so he decided to filed for Chapter 13 Bankruptcy protection. He completed the debtor education course as required. (Applicant's Post-Hearing Exhibit 14.) In April 2011, Applicant filed for Chapter 13 and included this delinquent debt. (See, Schedule F in Applicant's Exhibit A.) Applicant has complied with the Chapter 13 Trustee's payment schedule without hardship. (Government Exhibit 3.)

Applicant is current on all of his other debts. He has a history of paying his bills on time and living within his means. He has no other credit card debt.

In early 2011, Applicant was contacted and interviewed by the Internal Revenue Service and the Federal Bureau of Investigation concerning the property management company. in which he had invested. He learned that they were under investigation for fraud. He was informed that the situation had occurred to many other investors and that it even involved the same properties he had purchased. In February 2013, Applicant and his wife testified in District Court against the defendant management company. The defendant pled guilty and sentencing was scheduled for July 2014. (Tr. pp. 26-27.)

Applicant received a letter of appreciation from the Navy for his excellent work as a civilian. (Applicant's Post-Hearing Exhibit 15.) He also received a Service Excellence award from another government employer. (Applicant's Post-Hearing Exhibit 16.)

## 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:

20.(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

20.(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

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, 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.

Here, the old saying applies, if it sounds too good to be true, it is. Applicant detrimentally relied on the property management company to properly handle his investments. The company grossly mismanaged the Applicant's properties, he was not financially prepared to take over the payments in the event the company breached their contract, and he took the hit, causing considerable strain on his finances, and his properties were foreclosed upon. Applicant intentions were honorable throughout the entire process. He has received no inherent benefit from the default. This was obviously an isolated incident that will not recur.

Applicant received a Form 1009-A and a Form 1099-C from the lender concerning the loans on the properties and paid the taxes that were assessed from the transactions. His other debt is being handled through her Chapter 13.

Applicant understands that he must remain fiscally responsible if he is to hold a security clearance. He has made a good-faith effort to resolve his past due indebtedness. He has not incurred any new debt that he cannot afford to pay. He has learned from his mistakes, and demonstrated that he can properly manage his financial affairs. There is clear evidence of financial rehabilitation. Considering all of the evidence, the Applicant has 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. However, Mitigating Conditions 20.(b) *the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)*, and *the individual acted responsibly under the circumstances*; 20.(c) *the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*; and 20.(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* also apply. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

I have also considered the "whole-person concept" in evaluating the 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 good judgement, trustworthiness, reliability, candor, and a willingness to comply with rules and regulations, and/or other characteristics indicating that the person may properly safeguard classified information.

I have considered all of the evidence presented, including his excellent and dedicated service to our country during his 23 years of active duty in the Navy, followed by his seven years of civilian service. It mitigates the negative effects of his financial indebtedness and the effects that it can have on his ability to safeguard classified information. On balance, it is concluded that the Applicant has overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding for the 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 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.  
Subpara. 1.a.: For the Applicant.  
Subpara. 1.b.: For the Applicant.  
Subpara. 1.c.: For the Applicant.

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge