



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-01906
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: Terri Valentine Duarte, Personal Representative

January 18, 2008

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**Decision**

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LOKEY- ANDERSON, Darlene D., Administrative Judge:

**History of Case**

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on September 27, 2006. On August 30, 2007, the Defense Office of Hearings and Appeals (DOHA), 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 DOHA 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 in writing on October 5, 2007, and requested a hearing before DOHA Administrative Judge. This case was assigned to the undersigned on November 1, 2007. A notice of hearing was issued on November 29, 2007, scheduling the hearing for December 14, 2007. At the hearings the Government presented eight exhibits, referred to as Government Exhibits 1 through 8. The Applicant

presented eight exhibits, referred to as Applicant's Exhibits A through H. The Applicant called three witnesses to testify. He also testified on his own behalf. The official transcripts (Tr.) were received on January 2, 2008.

### **Findings of Fact**

The Applicant is 47 years old and married. He has a Bachelor's Degree in Professional Aeronautics and Business Management. He is employed by a defense contractor as a Systems Safety Engineer and is seeking to obtain a security clearance in connection with his 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 to engage in illegal acts to generate funds.

The Applicant joined the Navy on January 16, 1978, at the young age of seventeen. He had a stellar military career as an enlisted man and retired as a Senior Chief E-8. He married his wife in 1996. Following his military retirement, he began working for a defense contractor.

In 2004, while employed with the defense contractor, the Applicant was offered a promotion that required that he move from Washington state to New York. The Applicant decided to accept the opportunity and moved his family to New York. He put his house in Washington up for sale and purchased a house in New York. He took a loan out on his house in Washington to use as a down payment for the new house in New York. By the time he moved his family to New York he was already \$30,000 in debt. Although he was offered some moving expenses from his employer, the entire move cost him \$55,000 out of pocket that was not reimbursed. The Applicant soon learned that the housing market in New York was almost three times more expensive than the housing market in Washington state. After purchasing his house in New York, he took out loans to get the house in order. He determined that the house was not large enough and so he put it up for sale and moved into a larger house in New York. He was unable to sell the first house as the housing market in New York had taken a nose dive since he purchased it, and so he owed more on it than what he could sell it for. This house is now in foreclosure. Frustrated by the situation and unsure of what else to do, the Applicant left his family and his second house in New York and moved to California where he believed the cost of living would be better. Upon returning to California, he lived in a rented trailer in an RV park. His wife and children remained in New York with the hopes of selling their second house. The Applicant finally moved his family to California to join him even though their second house in New York did not sell. This house is also currently in foreclosure.

This entire fiasco caused the Applicant to become seriously and delinquently indebted. So deeply indebted that he could no longer afford to pay his bills and recently incurred debts on a regular monthly basis. The Applicant's income and expenses were unstable due largely to this move. In an effort to resolve his indebtedness, he decided that his only reasonable choice was to file Bankruptcy. Understanding that he had a moral obligation to pay his bills, on December 5, 2006, the Applicant filed for bankruptcy under Chapter 13. On May 8, 2007, the petition was confirmed by the court. Under the initial terms of the Bankruptcy, the Applicant is required to pay \$1,361.00 per month for a period of five years. The Applicant testified that the court order was recently modified which suspended three months of the payment and changed the monthly payments to \$1,200.00 per month which will increase incrementally over time. (Tr. p. 64 and Applicant's Exhibit E). Since January 2007, the Applicant has been making payments under this Bankruptcy plan. (Tr. p. 116 and Applicant's Exhibit F).

The Applicant admitted and the documentary evidence supports the fact that the Applicant is indebted to each of the creditors listed in the SOR. (See Government Exhibits 5,6, 7 and 8). The Applicant further stated and the documentation supports the fact that each of the debts listed in the SOR have been included in the Applicant's Chapter 13 Bankruptcy petition and are scheduled to be paid within the next five years under the plan confirmed by the court. (See Applicant's Exhibit 4 and Government Exhibit 1). The following debts, mainly credit card debt, are included in the Chapter 13 Bankruptcy petition: A debt owed to Chase in the amount of \$28,000.00, a debt owed to Bank of America in the amount of \$42,449.00, a debt owed to Bethpage Federal Credit Union in the amount of \$8,356.00, a debt owed to Capitol One in the amount of \$12,736.00, a debt owed to American Express in the amount of \$5,057.00, a debt owed to Bank of America in the amount of \$3,612.00, a debt owed to Capitol One Bank in the amount of \$809.0, a debt owed to GEMB.Old Navy in the amount of \$1,237.00, a debt owed to GEMB/PC \$62.00, and a debt owed to AT&T Universal/Citibank in the amount of \$2,115.00.

The debts owed to Indymac Bank in the amount of \$566,000.00, and a debt owed to Special Loan Services in the amount of \$116,000.00, are for home loans that are presently in foreclosure or subject to short sale.

During his military career the Applicant received five good conduct medals. Approximately sixteen of the twenty years spent in the Navy, the Applicant held a Top Secret security clearance and never had a security violation.

The Applicant was asked if he was given a million dollars to pay off all of his debts and his family could live in a nice house again, in exchange for divulging classified information, would he agree to it. The Applicant stated, "Even if – you said foreign spy – you didn't even have to say that. There is - - I learned from my parents there is no easy answer to anything. You know, even if I won the lotto tomorrow and there wasn't you or anybody else, there is no easy answer. You have to pay the piper. There has to be something that comes out. A foreign spy - - answering that - - being

whoever it is, even if unbeknownst to me, it is a foreign spy, there is no easy answer and to betray my country, to betray my friends, it will never happen.” (Tr. pp. 128-129).

The Applicant’s wife, father and step daughter testified on his behalf. They have strong feelings of affection and respect for the Applicant. They consider the Applicant to be a good American, who is responsible, polite, reliable, respectful and trustworthy. They highly recommend him for a position of trust.

Letters of recommendation submitted on behalf of the Applicant from his manager, professional colleagues, coworkers and friends attest to his ethical, conscientious, honest, dependable, reliable, hard working nature. The Applicant is known for his outstanding attitude, patriotic nature, integrity and loyalty. He is highly trusted and respected by all. He is considered a dedicated professional in every sense of the word and highly recommended for a position of trust. (See Applicant’s Exhibits A, B and C).

The Applicant has received numerous awards, commendations and letters of appreciation for his invaluable technical support in the defense industry. (See Applicant’s Exhibit D).

### **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.

19. (e) consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to - income ratio, and other financial analysis.

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 has 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;

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 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature 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 voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- 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 predicted 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."

### **Analysis**

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 his 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.

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. With respect to his poor financial situation, the Applicant became seriously indebted as a result of a series of poor decisions that snowballed and negatively impacted his finances. In an effort to improve his financial situation, by taking a job promotion, he fell deeper and deeper into debt. He obviously failed to consider the vast difference in the cost of living in New York and the other expenses and unfortunate things that could come along with such a move. In addition several unfortunate circumstances beyond his control caused more financial difficulties, namely his inability to sell his house in Washington state. Despite this, in an effort to resolve his financial indebtedness he has filed Chapter 13 bankruptcy and has been paying the trustee under the plan since January 2007. Under the circumstances, he has made a good faith effort to resolve his indebtedness, and there is evidence of financial

rehabilitation. He is paying his delinquent debts and plans to continue to pay them on a monthly basis until they are paid off. He is also current with his regular monthly expenses. The Applicant has demonstrated that he can properly handle his financial affairs.

Under Guideline F (Financial Considerations), Disqualifying Conditions 19(a), "inability or unwillingness to satisfy debts;" 19(c), "a history of not meeting financial obligation;" and 19(e), "consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis," apply. 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 has 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).

In addition to the disqualifying and mitigating conditions in this case, I have also considered the "whole person" concept. The Applicant is 47 years of age and has no security violations what so ever. He has an impressive military record and extensive experience and education in the field of engineering. Over the past several years, he has unfortunately encountered bad luck along with making bad decisions that have negatively impacted his finances. This past year, he has worked hard to resolve his delinquent indebtedness, by filing Chapter 13 and following the trustee's payment plan. He plans to continue this until all of his delinquent debts are satisfied. Considering all of the facts and circumstances, I find that he has mitigated the concerns arising from his financial considerations.

I have considered the evidence as a whole, including each of the appropriate factors and guidelines in the Directive. I have carefully considered the Applicant's testimony and his documentary evidence. On balance, I conclude that his mitigating evidence is sufficient to overcome the evidence of unreliability and unsuitability for a security clearance. Therefore, it is clearly consistent with the interests of national security to grant him a security clearance.

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 allegations expressed in Paragraph 1 for the Government's Statement of Reasons.

## **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.
- Subpara. 1.d: For the Applicant.
- Subpara. 1.e: For the Applicant.
- Subpara. 1.f: For the Applicant.
- Subpara. 1.g: For the Applicant.
- Subpara. 1.h: For the Applicant.
- Subpara. 1.i: For the Applicant.
- Subpara. 1.j: For the Applicant.
- Subpara. 1.k: For the Applicant.
- Subpara. 1.l: For the Applicant.
- Subpara. 1.m: For the Applicant.

## **Conclusion**

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.

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Darlene Lokey-Anderson  
Administrative Judge