



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



In the matter of: )  
 )  
----- ) ISCR Case No. 07-11433  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Robert E. Coacher, Esquire, Department Counsel  
For Applicant: *Pro Se*

April 9, 2008

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**Decision**

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Lokey-Anderson, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (E-QIP), on December 14, 2006. On October 24, 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 November 26, 2007, in which he 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 the Applicant on December 26, 2007. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on January 7, 2008, and he submitted no reply.

The case was assigned to the undersigned for resolution on March 27, 2008.

## FINDINGS OF FACT

The Applicant is 35 years old and unmarried. He is employed by a defense contractor in the Design Training Program and is seeking to obtain a security clearance in connection with her 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 she is financially overextended and at risk to engage in illegal acts to generate funds.

The Applicant admits that he is indebted to the following seven creditors totalling the approximate amount of \$25,632.00, as set forth in the SOR in allegations 1(a) through 1(j). (See Government Exhibit 3). A delinquent debt to CBCS/MCI Com in the amount of \$29.00 remains owing. A delinquent debt to EQUIDATA in the amount of \$522.00 remains owing. A delinquent deb to HILCORECV/DOMINION in the amount of \$187.00 remains owing. Two delinquent debts to SALLIE MAE in the amount of \$2,625.00 and \$4,000.00 remain owing. Two delinquent debts to the Department of Education in the amount of \$4,065.00 and \$3,282.00 remain owing. Two delinquent debts to AMS-SG in the amounts of \$2,000.00 and \$500.00 remain owing. A delinquent debt to US DEPT ED in the amount of \$8,411.00 remains owing. (See Government Exhibits 5, 6 and 7).

Most of the Applicant's delinquent debts are for student loans. He states that he intends to get them back into a non-delinquent status once he returns to school to finish his Engineering degree. He also plans to pay them in their entirety once he completes his degree. With respect to his other delinquent debts, he plans to contact the creditors and either pay off the debt or set up a payment schedule to do so.

He explained that for a period of time he had taken on all of the household expenses while his fiancé worked part-time while completing her degree. She graduated in June 2007, with her Masters in Business Administration and has since obtained employment with a salary comparable enough for her to assume all of the expenses that the Applicant was once responsible for. In his answer to the SOR, the Applicant stated in part..."At the current time I am obligated to make contact with Sallie Mae and the Department of Education and arrange a payment schedule comparable with my salary. The other delinquencies will be given my immediate attention for repayment and removal from my credit report". (See Government Item 3, p.1).

The Applicant has presented no explanation or documentary evidence to demonstrate how he will pay off his delinquent debts.

## 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

#### Conditions that could raise a security concern:

- 19.(a) inability or unwillingness to satisfy debts;
- 19.(c) a history of not meeting financial obligations.

#### Conditions that could mitigate security concerns:

None.

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.”

## **CONCLUSIONS**

In the defense industry, a security clearance 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 such access 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 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 Applicant is indebted to seven separate creditors and owes in excess of \$25,000.00. With respect to these past due debts, he has done nothing to resolve them. He has presented no evidence as to how he will pay them. Furthermore, although he plans to re-enter school and properly defer his student loans, to get them out of a delinquent status, he has obviously not done so yet, as he has presented no documentary evidence demonstrating this. At the present time, he remains indebted to each of his creditors. He has failed to demonstrate a track record of financial responsibility, or that he has resolved his financial indebtedness. Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

There is no evidence of financial rehabilitation at this time. 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 apply. His financial problems remain current, they are not isolated, and the Applicant has not initiated a prompt, good faith effort to repay his overdue creditors or otherwise resolve his debts.

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 under all of the guidelines viewed as a whole, support a whole person assessment of questionable judgement, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard classified information.

This Applicant has not demonstrated that he is trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of 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: 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.

### **DECISION**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge