



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-14040
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jennifer I. Goldstein, Esquire, Department Counsel  
For Applicant: *Pro Se*

July 10, 2008

---

**Decision**

---

Lokey-Anderson, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on May 17, 2006. On February 22, 2008, 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 March 11, 2008, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on April 10, 2008. A notice of hearing was issued on April 17, 2008, scheduling the hearing for June 3, 2008. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6. The Applicant presented two exhibits, referred to as Applicant's Exhibits A and B. The Applicant called one witness and testified on his own behalf. The record remained open until July 2, 2008, to allow

the Applicant to submit additional supporting documentation. The Applicant submitted twelve Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits 1 through 12. The Government had no objection to Applicant's Post-Hearing Exhibits. The official transcript (Tr.) was received on June 13, 2008.

### **FINDINGS OF FACT**

The Applicant is 25 years old and unmarried. He has a Bachelor's Degree in Mechanical Engineering. He is employed by a defense contractor as a Mechanical 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 of having to engage in illegal acts to generate funds.

The SOR alleges four debts totaling in excess of \$65,000.00. A debt to a creditor in the amount of \$26,401.00, a debt to a creditor in the amount of \$9,682.00, a debt to a creditor in the amount of \$9,345.00, and a debt to a creditor in the amount of \$13,551.00. Credit reports of the Applicant reflect that these debts have been owing since 1998/1999. (Government Exhibits 3, 4 and 5). The Applicant denies each of the debts and claims that he did not incur the debts but was the victim of identity theft and credit card fraud.

In 1999, the Applicant's father started receiving threatening letters and telephone calls from creditors concerning delinquent debts allegedly incurred by the Applicant and his brother. The Applicant was a minor and only fifteen years old at the time. The Applicant's father contacted the creditor's fraud departments to report that the debts were not the Applicant's or his brother's debts. The Applicant's father suspected that the individual who perpetrated the fraud was the Applicant's half-sister (his wife's daughter from a previous marriage), who he helped raise since she was fifteen years of age, and/or her husband.

In 1999, the Applicant's half-sister and her husband came to visit the Applicant and his parents and stayed at their home. Following their visit, they abruptly moved from their out of state home to the state where the Applicant lived. They purchased an expensive home, cars, started several businesses, including a beauty shop and a restaurant, and neither of them were employed during this period.

In December 1999, the Applicant's father filed credit card fraud alerts for himself, his wife, the Applicant, and his brother. At that time, he was successful in having

several of the debts forgiven through the fraud departments by simply having the Applicant and his brother sign affidavits attesting to the fact that they did not incur the debt. The Applicant's father also contacted his state representative, who spoke to the Office of the Attorney General and was advised that the only way at that time to proceed was to prosecute the individual that they suspected had committed the fraud. About this time, the Applicant's half-sister and her husband abruptly moved out of state and left no forwarding address. For two years, the Applicant had no knowledge of where they lived. Presently, the Applicant's half-sister's husband is in prison for bank fraud. In April 2000, the Applicant's father suffered a brain aneurism and was unable to pursue the matter any further at that time. (See Applicant's Post-Hearing Exhibit 10).

In 2002, the Applicant's father hired an attorney to assist his sons with their credit problems. After graduating from college, in August 2005, the Applicant moved out of state and began working for his current employer.

An affidavit from Applicant's attorney, dated June 17, 2008, who is now a Magistrate, indicated that the Applicant was underage at the time that his half-sister and/or her husband committed identity theft and credit card fraud against the Applicant's family. Any payments on the accounts that were made by the Applicant's father and mother were made in an effort to protect their daughter from criminal prosecution. The attorney has been unable to provide useful assistance to the Applicant or his parents due to the age of the debts and the fact that all collection efforts have ceased. (See Applicant's Post-Hearing Exhibit 1).

Applicant's performance reviews for the periods from October 2005 through October 2006, and January 2007 through January 2008, reflect that he either "meets expectations" or "exceeds expectations" in every category. (See Applicant's Post-Hearing Exhibit 12).

A letter from the Applicant's half-sister dated June 12, 2008, indicates that she has reason to believe that her husband committed the credit card fraud against her brother, the Applicant. (See Applicant's Post-Hearing Exhibit 2).

Letters of recommendation from professional associates of the Applicant attest to his trustworthiness and responsible nature. (See Applicant's Post-Hearing Exhibit 11).

Correspondence from Transunion credit agency indicates that they have completely removed all delinquent accounts from the Applicant's credit report. (See Applicant's Post-Hearing Exhibit 8).

Correspondence from Equifax credit agency indicates that they are still conducting their investigation of the circumstances. (See Applicant's Post-Hearing Exhibit 6).

## 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.(c) a history of not meeting financial obligation;

#### Conditions that could mitigate security concerns:

20.(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individuals current reliability, trustworthiness, or good judgment;

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.(e) the individual has a reasonable basis to dispute the legitimate of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

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, 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. The Applicant's poor financial history is not any fault of his own. His four delinquent debts totaling in excess of \$65,000.00 were caused by his half-sister and/or her husband who committed identity theft and credit card fraud against the Applicant. The Applicant is working diligently to clear up this credit mess. He understands the importance of paying his bills on time and living within his means. Under the circumstances, he has made a good faith effort to resolve his indebtedness, and there is evidence of financial rehabilitation. The Applicant has demonstrated that he can properly handle his financial affairs.

Under Guideline F (Financial Considerations), Disqualifying Conditions 19.(c) *a history of not meeting financial obligation* applies. However, Mitigating Conditions 20.(a) *the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individuals current reliability, trustworthiness, or good judgment*, 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, and 20.(e) *the individual has a reasonable basis to dispute the legitimate of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue also apply.*

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 good judgement, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, and/or other characteristics indicating that the person may properly safeguard classified information.

The Applicant was a fifteen year old minor when the delinquent debt listed in the SOR was incurred. Based upon the evidence, he was the victim of identity theft and credit card fraud before he was even old enough to apply for credit. With regard to the debts he incurred himself, he has been responsible and has paid them in a timely basis. He has demonstrated that he is trustworthy, and that he meets the eligibility

requirements for access to classified information. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

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 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.

### **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