



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 07-18718  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Department Counsel  
For Applicant: *Pro Se*

September 24, 2008

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**Decision**

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Lokey-Anderson, Darlene D., Administrative Judge:

Applicant submitted his Questionnaire for National Security Positions on April 30, 2007. On April 30, 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 May 27, 2008, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on July 2, 2008. A notice of hearing was issued on July 8, 2008, scheduling the hearing for August 19, 2008. At the hearing the Government presented eight exhibits, referred to as Government Exhibits 1 through 8. The Applicant presented eleven exhibits, referred to as Applicant's Exhibits A through K. The record remained open until close of business on September 2, 2008, to allow the Applicant to submit additional supporting documentation. The Applicant submitted one Post-Hearing Exhibit, with eighteen enclosures, referred to as Applicant's Post-Hearing Exhibits A through R. The official transcript (Tr.) was received on September 3, 2008.

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **FINDINGS OF FACT**

The Applicant is 48 years old and divorced. He has three years of college. He is employed by a defense contractor as a Fire Captain 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 Statement of Reasons sets forth twelve separate creditors totaling approximately \$ 26,000.00. The Applicant admits each of the allegations set forth in the SOR. Credit reports of the Applicant dated June 14, 2007, January 28, 2008, April 23, 2008 and July 2, 2008, reflect each of the delinquent debts listed in the SOR. (See Government Exhibits 2, 3, 5 and 6).

The Applicant testified that he has been married and divorced twice. During his marriages, he left the responsibility of handling the finances to his spouses. Each of the debts listed in the SOR occurred during his marriages. About four years ago, the Applicant learned that his first ex-wife has stolen his identity. She was fraudulently using his credit line by running up debt after the marriage. With regard to his second wife, accordingly to the divorce decree their debt from the marriage was to be split equally. She, however, is having financial difficulties, and is unable to pay her part. The Applicant was also involved in a motorcycle accident and then lost his job in March 2007, which caused even more financial difficulties.

In an effort to resolve his indebtedness, the Applicant contacted a financial credit counselor to assist him in getting the debts paid, and/or removed from his credit report. He also placed fraud alerts on his credit line with the credit agencies to inform them of the identity theft. At this point, he has either paid off the debt or has set up a payment plan that he will be following to completely resolve the debt over time. (See Applicant's Exhibits B and C). The following debts listed in the SOR have been paid off by the Applicant; a debt to a creditor in the amount of \$840.00 has been paid, (See Applicant's Post-Hearing Exhibit A), a debt to a creditor in the amount of \$100.00 has been paid, (See Applicant's Post-Hearing Exhibit B and Applicant's Exhibit D), and a debt to a creditor in the amount of \$149.00 has been paid. (See Applicant's Exhibit C).

The following debts are currently being paid through a debt consolidation program entered into between the Applicant and his second ex-wife; a debt to a creditor in the amount of \$13,623.00; a debt to a creditor in the amount of \$1,481.00, a debt to a creditor in the amount of \$799.00; and a debt in the amount of \$611.00. (See Applicant's Post-Hearing Exhibits E, G and H).

The following debts were fraudulently incurred through identity theft committed by the Applicant's ex-wife after their divorce; a debt to a creditor in the amount of \$1,412.00; a debt in the amount of \$204.00; a debt in the amount of \$511.00, a debt in the amount of \$410.00; and a debt in the amount of \$872.00. The Applicant has filed a police report against his ex-wife and has sent copies of the report to the creditors to have them remove the debts from his credit report. (See Applicant's Post-Hearing Exhibits I through L).

The Applicant, in his capacity as a Fireman has received numerous certificates of training, participation and recognition. (See Applicant's Exhibit I).

The Applicant has received various awards and other commendations for his contributions to his employer. This includes, but is not limited to being honored for Fire Officer of the Year, 2007, Fire Department Employee of the Month, July 2000, Supervisor of the Month and Supervisor of the Quarter. (See Applicant's Exhibit I and Applicant's Post-Hearing Exhibit M, N, O, P, Q and R).

## 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 obligation;

#### 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;

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.”

## 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 was caused by a combination of events; two marriages and divorces, identity theft by an ex-wife, a motorcycle accident, and loss of employment. Since then, the Applicant has worked hard to resolve his indebtedness. He has hired a financial counselor to assist him. He has either paid off the debt, or has set up a payment plan to resolve it. He plans to continue making payments toward the debts until they are paid in full. He understands the importance of paying his bills on time and not living beyond 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. In the event that the Applicant does not continue to

pay his delinquent debts according to the payment plan or sooner if possible, his security clearance will be in immediate jeopardy.

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 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.

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.

This Applicant has paid or is currently paying his delinquent debts. 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.
- 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.

### **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