



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-00496
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

February 2, 2009

---

**Decision**

---

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on July 2, 2007. (Government Exhibit 1). On August 26, 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.

Applicant answered the SOR in writing on September 30, 2008, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on November 3, 2008. A notice of hearing was issued on November 12, 2008, scheduling the hearing for December 11, 2008. The Government offered Five exhibits, referred to as Government Exhibits 1 through 5, which were received without objection. Applicant offered two exhibits, referred to Applicant's Exhibits A and B, and testified on his own behalf. The record remained open until close of business on December 30, 2008 to allow, the Applicant to submit additional documentation. None was submitted. The transcript of the hearing (Tr.) was received

on December 23, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **FINDINGS OF FACT**

The Applicant is 44 years old and has a high school diploma and some college. He is employed by a defense contractor as an Assistant 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 Applicant served in the United States Navy, on active duty for twenty years, between the age of eighteen and thirty-eight. In June 2002, he retired with twenty years of service as an E-6. During his military career he held a DoD security clearance. Upon retirement, his life went into a downward spiral. He was unable to find employment that would make ends meet. To survive, he worked odd jobs for minimum wage and depleted his savings just to keep a roof over his head and food on the table. In 2004, he was unemployed for eight months. From October 2005 to June 2007, he worked as a grocery checker and earned \$8.50 an hour.

In May 2007, he was hired by his current employer. He applied for a security clearance but was unable to obtain one within the time frame required by his employer. He then found an opening within the company in a different city that caused him to relocate. This brought on unexpected expenses including the cost of relocating, car problems and paying back loans to family and friends. He was unable to resolve these delinquent debts that accumulated over time.

The Applicant is indebted to fourteen separate creditors in the amount of approximately \$17,500.00. (See Government Exhibits 2, 3 and 4). Each of the debts listed in the SOR remain delinquent and outstanding. The Applicant testified that he has not paid any of these debts. (Tr. p. 35). He states that he is now in a position to take care of the debts and he intends to pay them all. (Tr. p. 36). The Applicant claims that he has disputed one of the debts on line, but offers no documentation to substantiate this. He further states that he has no excuse for not taking care of the debts since he has been working for his current employer. He believes his work and commute schedule, up at 3:00 a.m. and back home by 8:00 p.m. at night has not given him much time to handle these matters. He does pay child support for his son in the amount of \$550.00 every month.

The Applicant's personal financial statement indicates that after paying his bills he has a net remainder of \$1,140.00. (See Government Exhibit 5). He explained that his net monthly income is \$4,550.00. After spending \$350.00 on groceries, \$100.00 on

clothing, \$500.00 on utilities, \$500.00 on car expenses, \$100.00 on life insurance, at least \$550.00 on child support, \$200.00 on medical claims, the rest he spends on his son and day to day expenses. He has \$175.00 in his checking account and nothing in his savings. He recently paid off his car and has at least an additional \$400.00 to pay his delinquent debts.

He has received no formal financial counseling. He is currently studying up on how to clean up his credit and is seeking advice from a coworker who is a financial expert. (Tr. p. 42). The Applicant is expecting a promotion and a pay raise in the next year. He plans to have all of his financial delinquencies resolved by April 15, 2009, or at an acceptable level. (Tr. p. 49).

## 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;

19.(e) consistent spending beyond ones means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or 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 acted responsibly under the circumstances;

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 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.

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. The Applicant has not made a good faith effort to resolve his past due indebtedness, and there no is evidence of financial rehabilitation.

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 ration, and/or other financial analysis* apply. None of the mitigating conditions are applicable. The Applicant has been gainfully employed since May 2007. Since then, he has not paid even one of the delinquent debts listed in the SOR, and remains indebted to each of the fourteen creditors listed in the SOR that totals approximately \$17,500.00. He has failed to make a good faith effort to resolve his indebtedness, and thus, he has not demonstrated that he can properly handle his financial affairs. Accordingly, I find against 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 under all of the guidelines viewed as a whole, support a whole person assessment of poor judgement, untrustworthiness, unreliability, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

Considering all of the evidence presented, it does not come close to mitigating the negative effects of his delinquent debts and the impact that it can have on his ability to safeguard classified information. 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 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:	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.
Subpara. 1.k.:	Against the Applicant.
Subpara. 1.l.:	Against the Applicant.
Subpara. 1.m.:	Against the Applicant.

## **DECISION**

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

Darlene Lokey Anderson  
Administrative Judge