



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-04282  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

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

April 14, 2009

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) dated December 2, 2007. On November 21, 2008, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 a clearance should be denied or revoked.

Applicant answered the SOR in writing on December 21, 2008, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on February 17, 2009. A notice of hearing was issued on February 23, 2009, scheduling the hearing for March 12, 2009. The Government offered seven exhibits, referred to as Government Exhibits 1 through 7, which were received without objection. Applicant offered five exhibits, referred to Applicant's Exhibits A through E, and testified on his own behalf. The record remained open until close of business on March 26, 2009, to allow the Applicant the opportunity to submit additional documentation. Applicant submitted one Post-Hearing Exhibit. The transcript of the hearing (Tr.) was received on March 23, 2009. Based upon a review of the case

file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **FINDINGS OF FACT**

The following Findings of Fact are based on the Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 34 years old and he has completed about eighteen months at a junior college. He is employed by a defense contractor as a painter 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). After a complete and thorough review of the evidence in the record, and upon due consideration of the same, 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 a security clearance because he is financially overextended and at risk to engage in illegal acts to generate funds.

The Applicant admits and takes responsibility for each of the allegations set forth in the SOR under this guideline. Credit reports of the Applicant dated December 26, 2007, October 18, 2008, and February 13, 2009, reflect that he is indebted to at least ten separate creditors in the amount of approximately \$66,488.00. (Government Exhibits 2, 4 and 5).

Up until May 2002, the Applicant had always paid his bills on time and he had a perfect credit record. In May 2002, he moved to a small town in Florida with his girlfriend. They lived in an apartment with her mother for a while. He was unable to find employment and was forced to start living off of his credit cards. At the time, he had a motorcycle payment, and living expenses to pay. Although he was always searching for employment, from October 2001 through all of 2002, he was without a job. In January 2003, he became employed as a night security guard. The job was low paying and only enough to cover his rent, utilities and food. He and his girlfriend broke up, and he had to move into his own apartment, "the cheapest he could find", which cost him even more. (Applicant's Exhibit E).

In 2007, in search of a better paying job, the Applicant moved back to California, moved in with his mother, who agreed to allow him to live with her until his delinquent debts are paid in full, and started looking for employment. In December 2008, he was hired by his current employer and found the "job of a lifetime". He immediately started saving money to pay his delinquent debts.

Initially he had planned on saving his money and paying everything off all of his delinquent debt in one lump sum. (Tr. p. 51). He currently has \$7,000.00 in one of his accounts and \$3,400.00 in another. (Applicant's Exhibit A). He later learned about a consumer credit counselor who could assist him.

Shortly after receiving the SOR, the Applicant hired a consumer credit counselor to assist him in resolving his delinquent debt. Applicant explained that a settlement coach is a professional negotiator whose job it is to eliminate late fees that may have been added to his initial debt, and settle the debt for less. Each of the delinquent debts listed in the SOR are being addressed as part of the payment program. The payment program provides that he will make monthly installments of \$631.19, starting February 26, 2009, for 48 months that will pay off his delinquent debt in the amount of \$53,653.00. (Applicant's Exhibits B, E and Post-Hearing Exhibit). He has already made two payments under the plan. He strongly desires to tackle this debt and restore his good credit.

A letter from the Applicant's supervisor dated March 11, 2009, states that the Applicant is a valuable employee to the company because of his work ethic. He has been an "exemplary employee", receiving only positive feedback from customers and coworkers. (Applicant's Exhibit C).

Letters of recommendation from the Applicant's friends and family attest to his honesty, good judgment and reliability. (Applicant's Exhibit D).

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for a security clearance because he intentionally falsified material aspects of his personal background during the employment process.

The Applicant completed an Electronic Questionnaire for Investigations Processing dated December 2, 2007. Question 27(a) asked whether, in the last seven years, he had any judgments against him that have not been paid. The Applicant answered, "NO". (Government Exhibit 1). This was a false answer.

Question 28(a) of the same questionnaire asked the Applicant if he had been over 180 days delinquent on any debts. The Applicant answered, "NO". (Government Exhibit 1). This was a false answer. Question 28(b) of the same application asked the Applicant if he was currently over 90 days delinquent on any of his debts. The Applicant answered, "NO". (Government Exhibit 1). This was also a false answer.

The Applicant explained that at the time he completed the questionnaire he was pressed for time and initially answered "yes" to each of the questions in issue. The computer program then popped up a space requiring him to insert the amount owed, with the inability to move any further through the document. The Applicant did not have the information. He knew at the time that a thorough background investigation would occur and he would have the opportunity to meet with an investigator to fully explain his financial situation. He decided to simply answer the questions, "NO" with the understanding that he could explain later. He had no intent to deceive the Government or conceal material information. Ordinarily, this explanation would not be credible, but given the sincerity, honesty and demeanor of this particular Applicant, it is acceptable.

## 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:

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:

### Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Condition that could raise a security concern:

None.

Conditions that could mitigate security concerns:

None.

- 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's long period of unemployment and even longer period of underemployment caused his financial problems. There is no evidence of an expensive lifestyle, lavish spending or gambling. He has been frugal and responsible about paying his delinquent debts first. He has incurred no new debt. He has reduced his expenses by purchasing an inexpensive vehicle, all cash, and has moved in with his mother. He has been working for his current employer for shortly over a year and has been doing an outstanding job. He has hired a consumer credit counselor, set up a payment plan and is currently paying each of his delinquent creditors. He will continue to make monthly payments under the program until he is debt free. Under the particular circumstances of this case, I find that the Applicant has done his best, given the excessive nature of the debts, and has made a good faith effort to resolve them. 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. Finally, with respect to his finances, the Applicant must continue to make his monthly payments under his payment plan, addressing each delinquent debt in the SOR.

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, or other characteristics indicating that the person may properly safeguard classified information.

There is 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. However, 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. Here, the Applicant had initiated a good faith effort to repay his overdue creditors or otherwise resolve his debts. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

With respect to the allegations of falsification on the security clearance questionnaire, I do not find that they are supported by the evidence. Accordingly, Guideline E is found for the Applicant.

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 Paragraphs 1 and 2 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: 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.

Paragraph 2: For the Applicant.

- Subpara. 2.a.: For the Applicant.
- Subpara. 2.b.: For the Applicant.
- Subpara. 2.c.: For the Applicant.

## **DECISION**

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge