



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



In the matter of: )  
 )  
----- ) ISCR Case No. 08-10500  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Department Counsel  
For Applicant: *Pro Se*

September 4, 2009

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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 March 20, 2008. (Government Exhibit 1). On April 23, 2009, 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, (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 on May 5, 2009, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on June 1, 2009. A notice of hearing was issued on June 3, 2009, scheduling the hearing for June 24, 2009. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6. The Applicant presented no exhibits, but testified on his own behalf. The record remained open until July 24, 2009, to allow the Applicant to submit additional documentation. The Applicant submitted eight Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A through H. The official transcript (Tr.) was received on July 2, 2009. 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 32 years old and has a high school diploma and two years of college. He is employed by a defense contractor as an Office Manager 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 admits to twenty of the twenty-five debts set forth in the SOR under this guideline. Namely, that he is indebted in the amount totaling approximately \$25,000.00. Credit Reports of the Applicant dated May 8, 2008; March 20, 2009; May 26, 2009; and June 19, 2009, reflect that the following debts remain owing. (Government Exhibits 3, 4, 5 and 6).

In 1993, when the Applicant joined the Marine Corps at the age of eighteen, he had good credit. He served honorably for four years and was discharged in August 1997. While in the military, he got married and had a child, against his mother's advice. His wife benefitted from the Applicant's good credit, and charged up credit cards to purchase unnecessary things. Debt piled up that the Applicant could not afford to pay. After a year, the marriage went downhill, they separated and eventually divorced. Applicant was held responsible for most of the debt incurred during the marriage. The Applicant moved back into the barracks and went back to school. Except for his student loans for college and several cell phone bills, most of the Applicant's debt set forth in the SOR occurred during this marriage. The Applicant plans to resolve these debts as soon as possible. In 2006, the Applicant began working for his current employer.

Debts owed to a medical provider in the amounts of \$106.00, \$68.00, \$187.00, \$165.00, \$67.00, \$44.00, \$60.00 and \$604.00 remain outstanding. (Allegations 1(a), 1(c), 1(e), 1(n), 1(o), 1(p), 1(q), 1(u) and 1(w).) Applicant contends that he has no idea how these medical bills were incurred because he had full medical coverage while he was in the Marines. (Tr. pp. 49, 52, and 53). Applicant did nothing to investigate the matters.

Applicant disputed a debt owed to a telephone company in the amount of \$294.00. (Allegation 1(b).) The debt is no longer reflected as owing on the Applicant's most recent credit report. (See Applicant's Post-Hearing Exhibit A).

Applicant was indebted to a bank in the amount of \$706.00. (Allegation 1(d).) He testified that he has reduced the debt to \$500.00 (Tr. p. 39 - 40). Applicant provided no documentary evidence to support his testimony.

A debt owed to a bank in the amount of \$2,172.00 remains outstanding. (Allegation 1(f).) Applicant contends that he is disputing the debt because the charges have been trumped up and he does not owe what the creditor purports. (Tr. p. 50). Applicant provided no documentary evidence to support his testimony.

A debt owed to a bank in the amount of \$559.00 remains outstanding. (Allegation 1(g).) Applicant indicates that the bank has no record of the debt and he does not understand why the collection agency is still involved. Recently, he has started the process of settling this account. (Applicant's Post-Hearing Exhibits D and E).

A debt owed to a creditor in the amount of \$935.00 remains outstanding. Applicant is not aware of the debt and did nothing to investigate the matter. (Allegation 1(h).) (Tr. p. 52).

Debts owed to a bank for student loans in the amounts of \$636.00 and \$494.00 remain outstanding, but are in deferment. (Allegations 1(i) and 1(j).) Applicant's most recent credit report reflects that this debt is current. (Applicant's Post-Hearing Exhibit C and Tr. p. 47).

Debts owed to a lending institution for student loans in the amount of \$119.00 and \$180.00 remain outstanding, but are in deferment. (Allegations 1(k) and 1(l).) Applicant's most recent credit report reflects that this debt is current. (Applicant's Post-Hearing Exhibit C and Tr. p. 47).

Debts owed to a college in the amount of \$5,318.00 and \$4,803.00 remain outstanding, but are in deferment. (Allegations 1(r) and 1(s).) Applicant's most recent credit report reflects that this debt is current. (Applicant's Post-Hearing Exhibit C and Tr. p. 47).

A debt owed to a creditor in the amount of \$135.00 remains outstanding. Applicant did nothing to investigate the matter. (Allegation 1(t).)

A debt owed to a telephone company in the amount of \$808.00 remains outstanding. (Allegation 1(v)). Recently, he has started the process of settling this account. (Applicant's Post-Hearing Exhibits D and E).

A debt owed to a gym in the amount of \$694.00 remains outstanding. (Allegation 1(x).) Applicant submitted proof of the fact that he is a member of a class action disputing the debt. (Applicant's Post-Hearing Exhibit B).

A debt owed to a telephone company in the amount of \$936.00 remains outstanding. (Allegation 1(y).) Recently, he has started the process of settling this account. (Applicant's Post-Hearing Exhibits D and E).

A debt owed to a creditor in the amount of \$5,290.00 remains outstanding. (Allegation 1(m).) Applicant explained that his vehicle was stolen and eventually found, but the registration tags had been removed. The car was wrongfully towed and eventually auctioned off. Applicant stopped making the payments on the debt he owed on the vehicle and he does not intend to pay it. (Tr. pp. 40 - 41).

The Applicant has incurred no new delinquent debt since this marriage. He is current with all of his monthly expenses and now pays his bills on time.

Applicant's performance appraisal for the period from May 2007 through November 2007 reflects "very good" and "good" ratings in every category. (Applicant's Post-Hearing Exhibit G).

A letter of recommendation from the Applicant's supervisor indicates that the Applicant has successfully performed his duties on the job. He is timely, courteous and demonstrates dedication to all task assignments. He is considered responsible in respect to discretion, ownership and loyalty. He is highly recommended for a position of trust and is being considered for promotion. (Applicant's Post-Hearing Exhibit H).

## **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;

Condition 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 18 -19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct
- 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 extent to which participation is voluntary
- f. The presence or absence of rehabilitation and other permanent behavioral changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress; and
- 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. Under Guideline F (Financial Considerations), Disqualifying Conditions *19.(a) inability or unwillingness to satisfy debts*, and *19.(c) a history of not meeting financial obligation* apply. Although, Mitigating Condition *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* also applies, it is not controlling in this case.

Prior to his first marriage, the Applicant had good credit. Once in the military and newly married, his wife at that time incurred debt that the Applicant could not afford to pay. Admittedly these circumstances were largely beyond his control. He claims that he was not aware of the extent of his indebtedness until his security clearance investigation. However, after becoming aware of the debt, he has done very little to resolve it. With regard to his student loans, he has placed them on deferment and plans to pay them when they become due. But, there are many other debts, some of which are fairly small, that he has simply ignored. He has indicated that he has started the

process of disputing several of his debts, and that he will clear them up, but at the present time, they remain owing, and he has not demonstrated financial responsibility. Under the circumstances, he has not made a good faith effort to resolve his past indebtedness, and there is insufficient evidence of financial rehabilitation at this time. Hopefully, the Applicant will continue to work toward resolving his delinquent indebtedness and can demonstrate in the future that he can properly handle his financial affairs. Accordingly, at this time, I must 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, a lack of candor, and an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may properly safeguard classified information.

I have considered all of the evidence presented, and it does not mitigate the negative effects of his financial indebtedness and its impact on his ability to safeguard classified information. On balance, it is concluded that the Applicant has not 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.:	For the Applicant.
Subpara. 1.j.:	For the Applicant.
Subpara. 1.k.:	For the Applicant.
Subpara. 1.l.:	For the Applicant.
Subpara. 1.m.:	Against the Applicant.
Subpara. 1.n.:	Against the Applicant.
Subpara. 1.o.:	Against the Applicant.
Subpara. 1.p.:	Against the Applicant.

Subpara. 1.q.: Against the Applicant.  
Subpara. 1.r.: For the Applicant.  
Subpara. 1.s.: For the Applicant.  
Subpara. 1.t.: Against the Applicant.  
Subpara. 1.u.: Against the Applicant.  
Subpara. 1.v.: Against the Applicant.  
Subpara. 1.w.: Against the Applicant.  
Subpara. 1.x.: Against the Applicant.  
Subpara. 1.y.: 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