



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



In the matter of:)	
_____)	
SSN: _____)	ISCR Case No. 08-11522
)	
Applicant for Security Clearance)	

Appearances

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

May 27, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on January 4, 2008. (Government Exhibit 1). On January 29, 2009, 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 February 23, 2009, and requested a hearing before an Administrative Judge. The case was originally assigned to another Administrative Judge on March 19, 2009. The case was reassigned to the undersigned Administrative Judge on April 6, 2009. A notice of hearing was issued on April 7, 2009, scheduling the hearing for April 28, 2009. The Government offered five exhibits, referred to as Government Exhibits 1 through 5, which were received without objection. Applicant called three witnesses and offered four exhibits, referred to as Applicant's Exhibits A through D. He also testified on her own behalf. The record remained open until close of business on May 19, 2009 to allow the Applicant to submit additional documentation. Applicant submitted four Post-Hearing Exhibits, referred to as

Applicant's Post-Hearing Exhibits 1 through 4 that were admitted into evidence without objection. The transcript of the hearing (Tr.) was received on May 6, 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 Applicant is 44 years old and has a high school diploma. He is employed by a defense contractor as a Flight Test Mechanic and Inspector 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 joined the military in September 1982, and went in under the delayed entry program in September 1983. Prior to September 1999, the Applicant and his wife were gainfully employed, although living beyond their means, they were able to pay their bills on time. In September 1999, the Applicant received military orders to move out of state. His wife was forced to quit her job. Once relocated, their income never reached what it had been and they had difficulties paying their bills. They decided that the only way out was to file Bankruptcy. In September 1999, the Applicant filed for Chapter 7 Bankruptcy. Their debts were discharged in bankruptcy in January 2000.

After retiring from the military in March 2004, the Applicant and his wife got their real estate licenses and went into real estate sales. They were doing very well financially for a short time until suddenly, the market dried up. The Applicant went about eighteen months without a paycheck and fell behind on the financial obligations set forth below.

The Applicant testified that when the Government sent him a copy of his credit report, he learned for the first time that he owed a credit card debt in the amount of \$1,412.00. (Tr. p. 28 and Government Exhibits 2, 3 and 4). The Applicant settled this debt on March 11, 2009. (Applicant's Exhibit A).

He also learned of a debt he owed to a creditor in the amount of \$65,000.00 that had been charged off. This was for a second mortgage on his home that he took out in January 2006, when the real estate market was tough. He used the money to live on. Recently, with good intentions, he set up a temporary arrangement with the creditor to pay \$200.00 a month toward the loan. The arrangement automatically sent the debt

into collection. Applicant has continued to make the payments on time since the arrangement. (Applicant's Exhibit B). Applicant indicates that the creditor has agreed to settle the debt for \$15,000.00 and the payment must be made by May 30, 2009. Applicant plans to settle the debt. (Applicant's Post-Hearing Exhibit 2).

He also learned of a debt he owed in the amount of \$100.00. He stated that he originally paid the debt, but the check bounced and was returned. He has since paid the debt in full. (Tr. p. 57 and Applicant's Exhibit C).

While in the real estate business, the Applicant did not pay quarterly taxes on his income. As a result, he owes the Internal Revenue Service (IRS) for back taxes, fees, penalties and interest approximately \$47,000.00. In November 2008, a lien was placed against the Applicant in the approximate amount of \$47,642.00. He hired a financial counseling firm for \$4,500.00 to assist him in negotiating with the IRS. They did nothing but take his money and request more. (Applicant's Exhibit D). Applicant then decided to handle his financial matters himself. He recently contacted the IRS and has since paid off his back taxes owed for tax years 2005 and 2007. He currently owes approximately \$49,024.10 for tax year 2006. He has entered into an agreement with the IRS to pay \$600.00 monthly until the 2006 taxes are paid. (Applicant's Post-Hearing Exhibits 3 and 4).

Applicant testified that he has now learned to live within his means and operates under a budget. (Tr. p. 39). He earns in excess of \$100,000.00 a year, and his wife earns about \$60,000.00. He receives approximately \$1,547.00 monthly in retirement pay. He has two checking accounts, one that contains \$7,500.00, the that has \$2,300.00. One of his savings accounts has \$100.00 in it, the other contains \$16,027.00. He has no credit cards, no other delinquent accounts, and is current with all of his regular monthly expenses.

Applicant's witnesses include his second shift manager, a past military associate and a good friend each testified that the Applicant is reliable, trustworthy, honest and responsible. He is considered a man of high integrity. His supervisor indicates that among the seventeen Flight Mechanics he supervises, the Applicant rates among the top three. (Tr. pp. 27-33, 78-81 and 93-95).

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;

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, 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 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 introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case. After retiring from the military, and during the height of his real estate career, the Applicant was extremely careless and irresponsible. He made a lot of money in a short time, lived extravagantly, and did not pay his taxes. Since the downturn in the real estate market, and his decision to re-enter the defense industry, he has been reminded of the importance of maintaining good credit and fiscal responsibility. He has contacted each of his delinquent creditors and has either paid off the debt or is making payments to them in a systematic fashion to resolve the debt. He understands that in regard to each of his outstanding creditors, he must immediately arrive at a permanent payment plan that is acceptable to the creditor and he must continue to make payments accordingly, until the debt is paid in full. 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 he fails to follow through with his payment plans to his creditors and resolve his debt, 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. 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. Accordingly, I find for 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 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.

I have considered all of the evidence presented and it sufficiently mitigates the adverse information brought against him. 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 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:	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.

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