



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



In the matter of: )  
 )  
----- ) ISCR Case No. 09-00555  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Ray T. Blank, Jr., Department Counsel  
For Applicant: *Pro Se*

March 31, 2010

---

**Decision**

---

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on October 21, 2008. (Government Exhibit 4). On August 10, 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.

The Applicant responded to the SOR in writing on September 8, 2009, and he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on October 9, 2009. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on October 20, 2009, but he submitted no reply. The case was assigned to the undersigned for resolution on January 11, 2010. Based upon a review of the case file, pleadings and exhibits, eligibility for access to classified information is denied.

## FINDINGS OF FACT

The Applicant is 37 years old and has a high school diploma. He is employed by a defense contractor as an ALSE Technician 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 twelve of the sixteen past due debts set forth in the SOR under this subparagraph; which include allegations 1(a) through 1(q); except allegation 1(b), that he contends is the same debt as 1(k); 1(c), that he discharged in his 2001 bankruptcy; 1(l), that he claims he paid; and 1(p). Credit reports of the Applicant dated July 9, 2009; April 28, 2009; January 21, 2009; and October 29, 2008; indicate that he remains indebted in the amount of approximately \$35,642.00. (Government Exhibits 9, 10, 11 and 12). Applicant admits owing \$23,135.00.

The Applicant has a long history of financial problems. From April 1999, to March 2009, he was active duty in the United States Army, and received financial counseling offered by the military. In 2001, he filed for Chapter 7 bankruptcy relief and received a discharge of all of his known debts at that time. He attributes his earlier debt to a divorce and debt accumulated during the marriage.

Presently, the Applicant indicates that most of his delinquent debts set forth in the SOR, were incurred due to periods of unemployment and/or relocation, and have again been included in a recently filed Chapter 7 bankruptcy petition, and will be discharged. Several of the debts he claims have been paid. He submits no documentary evidence to support any of his assertions. The Applicant's e-QIP (Government Exhibit 4) and his personal statement (Government Exhibit 7) indicate that with the exception of two brief periods in 2006, his employment has been stable since August 2004. There is also evidence in the record that among other things, the Applicant purchased a truck and a boat that were repossessed in 2005, for failing to make payments, and were resold.

Applicant received the FORM on October 20, 2009, and was given the opportunity to respond to the FORM concerning the present status of his bankruptcy case, which is critical in this case. (See file). His response was due by November 19, 2009, and he failed to respond. There is insufficient evidence in the record to demonstrate that he has resolved his current indebtedness. There is no documentary evidence that supports the fact that he has recently filed bankruptcy or that the court has discharge any of his delinquent debts. There is no track record of systematic

payments on any of his accounts, thus, his delinquent debts remain outstanding. Furthermore, there is no evidence in the record as to whether he has sufficient income at this time, even if the debts are considered discharged, to pay his current monthly expenses in a timely manner.

## **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 obligations.

#### Conditions that could mitigate security concerns:

None.

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 behavior 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 predicated 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.”

## **CONCLUSION**

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 failed to introduce persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case. Under the circumstances, he has failed to make a good faith effort to resolve his indebtedness. He has failed to submit any evidence to support the fact that he has paid even one of the debts. Applicant contends that the most of the debts in the SOR are listed in his bankruptcy petition and that they will be discharged some future date. He did not submit a copy of the actual bankruptcy petition, nor did he respond to the FORM to provide the court with additional documentary information concerning the status of his delinquent debts. He failed to provided any supporting documentary evidence. Without more, it is impossible to determine that the Applicant has resolved his indebtedness or that he is sufficiently financially responsible for access to classified information. He has failed to demonstrate that he can properly handle his financial affairs.

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. None of the mitigating conditions are applicable. Based upon the large amount of debt owed by the Applicant and his failure to provide sufficient documentary evidence as to why he became indebted in the first place, what he has done to resolve it, and how he has changed or reformed his past spending habits, the Applicant has failed to provide sufficient evidence of financial rehabilitation. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

The evidence in the record is void concerning the status of the delinquent debts set forth in the SOR. Furthermore, the Applicant has no favorable recommendations or sufficient documentation to support his allegations. Accordingly, I have no choice than to find that he is not sufficiently trustworthy to have access to classified information.

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 a candor, and an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

I have considered all of the evidence presented and it does not sufficiently mitigate the adverse information brought against him. 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.
Subpara. 1.n.:	Against the Applicant.
Subpara. 1.o.:	Against the Applicant.
Subpara. 1.p.:	Against the Applicant.
Subpara. 1.q.:	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