



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



In the matter of:	)	
_____	)	
SSN: _____	)	ISCR Case No. 09-01368
	)	
Applicant for Security Clearance	)	

**Appearances**

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

January 25, 2010

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) dated October 9, 2008. (Government Exhibit 1). On June 12, 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, 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.

The Applicant responded to the SOR on a date uncertain, and he requested a hearing before a DOHA Administrative Judge. This case was originally assigned to another Administrative Judge on August 17, 2009. The matter was reassigned to the undersigned on August 24, 2009. A notice of hearing was issued on September 11, 2009, scheduling the hearing for October 6, 2009. At the hearing the Government presented seven exhibits, referred to Government Exhibits 1 to 7, which were admitted

without objection. The Applicant presented one exhibit, referred to as Applicant's Exhibit A and testified on his own behalf. The record remained open until November 6, 2009, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A that was admitted without objection. The official transcript (Tr.) was received on October 13, 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 following Findings of Fact are based on the Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 30 years old, and has an Associates Degree and one year toward a Bachelors Degree in Electronics Engineering. He is employed by a defense contractor as a Simulation 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). 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 each of the nine delinquent debts set forth in the SOR under this guideline. (See Applicant's Answer to SOR). His delinquent debts total approximately \$ 27,797.00. Credit Reports of the Applicant dated October 29, 2008, May 29, 2009, June 3, 2009, and September 28, 2009, collectively reflect each of the delinquent debts set forth in the SOR. (Government Exhibits 2, 3, 4, and 7). Applicant attributes his financial difficulties to various periods of unemployment from May 2007 through January 2008, November 2006 through February 2007, and October 2005 through April 2005. In April 2008, he was hired by his current employer and has been working full time since then.

The Applicant testified that he intends to resolve each of his delinquent debts. At this time, they all remain outstanding. A debt owed to a creditor in the amount of \$346.00 remains outstanding 1(a). This was a medical bill he received while he was out of work and had no health insurance. A debt owed to a creditor in the amount of \$94.00 remains outstanding 1(b). Applicant has no idea what the debt is for, but plans to pay it when he finds out. A debt to a creditor in the amount of \$2,184.00 for a medical bill remains outstanding 1(c). Two student loans the Applicant obtained for educational expenses remain outstanding in the amounts of \$5,564.00 and \$7,231.00, respectively 1(d) and 1(e). A debt owed to a creditor in the amount of \$7,197.00 for a repossessed

vehicle remains outstanding 1(f). Applicant explained that his wife lost her job and they could no longer make the payments on her vehicle. A debt owed to a creditor in the amount of \$1,106.00 remains outstanding 1(g). Applicant states that the debt is his wife's. A debt owed to a creditor in the amount of \$3,990.00 remains outstanding 1(h). Applicant believes the debt is charged off and he has no idea who is collecting on the account. A debt owed to a creditor for an unpaid medical bill in the amount of \$121.00 also remains outstanding 1(h).

Applicant further explained that he has been unable to pay his delinquent debts due to insufficient financial resources. He is the sole provider of the family of four. His wife is currently looking for work but has been unsuccessful at finding a job due to the difficult economy. The Applicant recently hired an attorney to file assist him with his indebtedness. His attorney indicates that based upon the Applicant's income, expenses and indebtedness, he clearly qualifies for Chapter 7 Bankruptcy. The attorney is in the process of filing the petition for Chapter 7 that will include each of the creditors listed in the SOR. (Applicant's Post-Hearing Exhibit A).

A letter of recommendation from the Applicant's lead technician, his shift supervisor and his site manager indicate that the Applicant is a trusted and professional member of the work unit. He has earned great respect as a subordinate and co-worker and has progressed to a point where he is capable of functioning reliably with minimal supervision. He is highly recommended for a position of trust. (Applicant's Exhibit A).

## **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.

Condition that could mitigate security concerns:

20(b) the condition 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 circumstance.

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, 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 is currently indebted to at least nine creditors in the amount of approximately \$27,797.00. His numerous periods of unemployment obviously contributed to, if not caused, his financial demise. However, over the past year and a half, he has been working full time for his current employer, and he has done little to resolve his indebtedness. He recently hired an attorney to file for Chapter 7 bankruptcy relief, however, at the present time, the petition has not yet been filed and the debts have not yet been discharged. Although he plans to list in his petition each of the delinquent debts set forth in the SOR, the process has only just begun and is far from being completed. A promise to take remedial measures in the future is not evidence of reform and rehabilitation.

As of yet, none of the delinquent debts in the SOR have been paid. The Applicant is just starting the financial rehabilitation process and has some time to go before his delinquent debts are resolved. At the present time, he has not presented sufficient evidence to demonstrate a track record of financial responsibility or that he has resolved his financial indebtedness. 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.

I have also considered the “whole person concept” in evaluating the Applicant’s eligibility for access to classified information, including his favorable letter of recommendation. 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 questionable judgement, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard classified information.

There is insufficient 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. Although Mitigating Condition *20(b) the condition 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 circumstance* applies, it is not controlling here. The Applicant has worked full time for the past year and a half and has not resolved even one of his debts, not even a small one. His financial problems remain current and they are not isolated. The Applicant has not initiated a prompt, good faith effort to repay his overdue creditors or otherwise resolve his debts. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

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 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: 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.

## **DECISION**

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

Darlene Lokey Anderson  
Administrative Judge