



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



In the matter of:	)	
-----	)	
SSN: -----	)	ISCR Case No. 09-02428
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Department Counsel  
For Applicant: Alan K. Kahn, Attorney At Law

August 30, 2010

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) dated January 12, 2004. (Government Exhibit 1.) On October 1, 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 October 27, 2009, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to another Administrative Judge on January 11, 2010. It was transferred to the undersigned Administrative Judge on March 26, 2010. A notice of hearing was issued on April 5, 2010, and the hearing was scheduled for May 13, 2010. At that hearing the Government presented six exhibits referred to as Government Exhibits 1 through 6,

which were admitted into evidence without objection. The Applicant presented six exhibits, referred to as Applicant's Exhibits A through F, which were admitted without objection. The Applicant also testified on his own behalf. The record remained open until close of business on May 27, 2010, to allow the Applicant to submit additional documentation. The Applicant submitted nine Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits H through P. The official transcript (Tr.) was received on May 19, 2010. 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 45 years old and did not complete his degree. He is employed by a defense contractor as the Director of Business and Product Development 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 delinquent debts set forth in the SOR under this guideline that include unpaid debts totaling in excess of \$16,000. Credit Reports of the Applicant dated May 22, 2004; March 28, 2009; and August 11, 2009; collectively reflect each of the delinquent debts set forth in the SOR. (Government Exhibits 4, 5 and 6.)

The Applicant was married with three children. During the four year period from 2002 to 2006, his wife spent a significant amount of time in Mexico taking care of her father who was suffering from a brain tumor. He eventually passed away. This posed a financial hardship on the family. By early 2006, there were serious marital problems that caused the Applicant to separate from his wife. He moved out of the house and then filed for divorce. The divorce proceedings continued until 2008. During this two year period, he was supporting two households, as his wife was not working. He followed the advice of his attorney, who told him not to pay the joint debts from the marriage until a formal marital settlement agreement was reached between him and his wife. He was paying for his wife's nursing education, and traveling extensively on his job and working lots of overtime. Applicant was under the impression that the divorce would take six months and the assets and liabilities would be split. It actually took two years, and during this time, many of his debts went into collection.

The Applicant became indebted to a number of creditors set forth below. He was indebted a creditor for a delinquent medical bill in the amount of \$63.00. He has satisfied the debt. (Applicant's Post-Hearing Exhibit L.) He was indebted to a creditor for a delinquent credit card bill in the approximate amount of \$10,031.00. On June 25, 2007, the debt was cancelled by the creditor, and the Applicant was issued a 1099-C that includes it as income on his taxes. (Applicant's Exhibit F.) He was indebted to a creditor in the approximate amount of \$3,607.00. On June 25, 2007, the debt was cancelled by the creditor, and the Applicant was issued a 1099-C that includes it as income on his taxes. (Tr. pp. 37-40 and Applicant's Exhibit F.) He was also indebted to a creditor in the approximate amount of \$1,023.00. The debt was settled on May 10, 2010. (Applicant's Exhibit A, at item K, and Applicant's Post-Hearing Exhibit O).

In addition, the Applicant was indebted to a creditor in the amount of \$563.00. The debt was paid on May 10, 2010. (Applicant's Exhibit J.) He was indebted to a creditor for a delinquent medical bill in the amount of \$210.00. The debt was paid on May 25, 2010. (Applicant's Post-Hearing Exhibit N.) He was indebted to a creditor in the amount of \$337.00. The debt was paid. (Applicant's Post-Hearing Exhibits M and N). Finally, a debt to a creditor in the amount of \$1,098.00 for musical instruments has been paid. (Applicant's Post-Hearing Exhibits N and P.)

The Applicant is highly compensated for his work. His annual income is approximately \$184,000. Thus, his gross monthly salary is about \$13,000 and after deductions he clears about \$7,668.00. His most recent financial statement indicates that his total monthly expenses, which includes \$3,100 in child support, are approximately \$6,350.00. (Applicant's Exhibit D.) His divorce is now final, and he has resolved most if not all of his delinquent indebtedness. (Applicant's Post-Hearing Exhibit J.) He plans to comply with the marital settlement agreement and maintain financial responsibility. In other words, he understands that he must always live within his means and continue to pay his bills on time. He receives annual stock options and he has a 401(k) that he is regularly contributing to.

Performance evaluations of the Applicant from March 2008 through April 2010, reflect an overall rating of 3.8, which is favorable. (Applicant's Post-Hearing Exhibit I.)

Letters of recommendation from the Applicant's Executive Vice President and General Manager, the Director of Human Resources, and the Facility Security Officer are favorable. (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. 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 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;

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 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 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.”

## **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.

Circumstances largely beyond the Applicant's control, namely his divorce, caused his financial hardship. Maintaining two households for about two years, while paying for his wife's education, and allowing his bills to pile up on the advice of his attorney, only complicated matters. Since his divorce has been finalized, he has been prudent and exercised good judgment in an effort to resolve his debts. He has paid off his delinquent debts or otherwise resolved them. He is living within his means and currently demonstrates financial rehabilitation. He has presented sufficient evidence to demonstrate a track record of financial responsibility and has resolved his financial indebtedness.

There is sufficient 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 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* and, 20(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* also apply. The Applicant has indeed made 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.)

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.

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 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.

### **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