



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



In the matter of:	)	
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SSN: -----	)	ISCR Case No. 09-02837
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Department Counsel  
For Applicant: *Pro se*

June 23, 2010

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on August 29, 2008. (Government Exhibit 1.) On October 5, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. The action was taken under Executive Order 10865, "Safeguarding Classified Information Within Industry" (February 20, 1960), as amended; Department of Defense Directive 5220.6, "Defense Industrial Personnel Security Clearance Review Program" (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense (DoD) for SORs issued after September 1, 2006.

The Applicant responded to the SOR on January 25, 2010, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on February 18, 2010. A notice of hearing was issued on March 1, 2010, scheduling the hearing for April 14, 2010. The Government presented six exhibits, referred to Government Exhibits 1 to 6, which were admitted without objection. The

Applicant presented five exhibits, referred to as Applicant's Exhibits A through E, which were admitted without objection. The Applicant called one witness and testified on his own behalf. The record remained open until April 24, 2010, 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 1, which was admitted without objection. The official transcript (Tr.) was received on April 22, 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 68 years old, and has completed the 11<sup>th</sup> grade, and several college courses. He is employed by a defense contractor as a QA Lab Analyst Staff 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 allegations 1(a), 1(b), 1(c), 1(d) 1(e), 1(f) and 1(g), and denies allegations 1(h), 1(i), 1(j), 1(k), 1(l), 1(m), and 1(n) of the SOR. (Applicant's Answer to SOR.) The debts that the Applicant denies have been settled and paid off. He contends that the delinquent debt set forth in allegation 1(g) is the same debts as allegation 1(l). The delinquent debts set forth in the SOR total in excess of \$80,000.00. (Applicant's Answer to SOR.) Credit Reports of the Applicant dated September 27, 2008; April 30, 2009; February 16, 2010, and April 13, 2010, collectively reflected each of the delinquent debts set forth in the SOR. (Government Exhibits 3, 4, 5 and 6.)

The Applicant has worked for his company for over forty years. He was laid off on two separate occasions, and hired back by his employer each time. He has held a security clearance for about thirty years, and has never had a security violation.

He explained that about two years ago, when he was planning to retire, he took a good look at his debt situation and decided he wanted to resolve it before retiring. He attributes his delinquent debt to high credit cards rates that over time have prevented him from eliminating the debt. He testified that he has always paid his bills, and paid them on time, but by only being able to pay the minimum rate, it became impossible for

him to pay them off. He testified that when he began to lose control, he contacted an attorney for financial advice. The attorney advised him that bankruptcy under Chapter 13 would allow him to restructure his payments and help him resolve his indebtedness. The Applicant was advised to stop making payments toward any of his creditors, and to pay only his house and utility bills. The Applicant then informed the DoD that he was filing Bankruptcy under Chapter 13.

On December 18, 2009, upon the advice of his attorney, he filed for Chapter 13 bankruptcy relief. (Applicant's Exhibits A, B, C and E) Each of the creditors set forth in the SOR, except those debts already settled, are listed in the bankruptcy. (Tr. p. 42.) A debt to a creditor in the amount of \$5,418.00; a debt to a creditor in the amount of \$2,871.00; a debt to a creditor in the amount of \$23,691.00; a debt to a creditor in the amount of \$2,561.00; a debt to a creditor in the amount of \$1,423.00; a debt to a creditor in the amount of \$38.00; a debt to a creditor in the amount of \$15,552.00; and a debt to a creditor in the amount of \$14,747.00, which is the same debt set forth in 1(g) of the SOR, are all listed in the Chapter 13 bankruptcy.

The Applicant testified that he has settled several of his debts. A debt owed to a creditor in the amount of \$1,180.00; a debt owed to a creditor in the amount of \$16,535.00; and a debt owed to a creditor in the amount of \$12,395.00; a debt in the amount of \$1,648.00; a debt to a creditor in the amount of \$1842.00; and a debt owed to a creditor in the amount of \$5,966.00, were settled and paid off (Tr. p. 44-50.)

Under the Chapter 13 bankruptcy payment plan the Applicant is required to make \$1,270.00 monthly payments to the assigned trustee, which is 92% of the total debt. Over time, the payment will increase by \$100.00 to cover 100% of the total debt. (Applicant's Exhibit A.) Since January 17, 2010, the Applicant has been making the required monthly payments. (Applicant's Exhibit A.) With the Applicant's salary and social security benefits, he brings home approximately \$7,500 monthly. (Tr. p. 54 and Applicant's Exhibit D.) Upon review of his personal financial statement, he has sufficient monies available to comfortably make the required monthly payment to the trustee under the bankruptcy agreement. The Applicant testified that by the end of the year, he will have at least 50 percent of the debt paid off. (Tr. p 73.) The entire amount of his delinquent debt will be resolved in two years. Applicant promises to never miss a payment and continue with the plan as it is outlined. If he does miss a payment, he will be forced under the agreement to do an automatic payroll deduction. (Tr. p. 74.) He hopes to retire by the end of the year.

The Applicant's wife testified and confirmed the fact that she and her husband plan to resolve all of their delinquent debt within two years. She stated that they had planned on filing bankruptcy earlier, but due to them both coming down with asthma, in December 2008 through June 2009, they were delayed. (Tr. pp. 69 -70.)

Letters of recommendation from coworkers, friends, and professional colleagues attest to the Applicant's high work ethic and good character. He has demonstrated

exemplary conduct both professionally and personally. He is well respected and highly recommended for a position of trust. (Applicant's Post-Hearing Exhibit 1.)

## **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(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.

The Applicant's excessive indebtedness was brought on by credit card overspending and increased interest rates that prevented him from being able to afford to pay off his debts. However, he has now addressed all of his delinquent debts. He has utilized the legal remedy available to him by filing bankruptcy under Chapter 13 and is paying the debt under a structured payment plan arranged by the trustee. He is making monthly payments in the amount of \$1,270.00 that are well within his ability, and plans to continue to do so until his debts are paid off in full. He has demonstrated that he is financially responsible. He is current with all of his other monthly expenses, and demonstrates financial rehabilitation. He has presented sufficient evidence to demonstrate a track record of financial responsibility.

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 Condition 20(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* applies. 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 judgment, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, and 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.
- 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.: For the Applicant.
- Subpara. 1.n.: 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