



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



In the matter of: )  
 )  
----- ) ISCR Case No. 09-03271  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Department Counsel  
For Applicant: *Pro Se*

January 25, 2010

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on January 2, 2009. (Government Exhibit 1). On June 11, 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 on June 26, 2009, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on August 20, 2009. A notice of hearing was issued on September 1, 2009, scheduling the hearing for October 21, 2009. At the hearing the Government presented six exhibits, referred to Government Exhibits 1 to 6. The Applicant presented ten exhibits, referred to as Applicant's Exhibits A through J. The record

remained open until October 30, 2009, to allow the Applicant to submit additional supporting documentation. The Applicant submitted two Post-Hearing Exhibits referred to as Applicant's Post-Hearing Exhibits A and B. He also testified on his own behalf. The official transcript (Tr.) was received on October 30, 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 27 years old and has a high school diploma. He is employed by a defense contractor as a Federal Security Officer 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 each of the delinquent debts set forth in the SOR. Credit reports of the Applicant dated February 3, 2009, April 23, 2009, July 17, 2009, and October 16, 2009, reflect each of the delinquent debts as owing. (Government Exhibits 2, 3, 4, and 6). After finishing high school, the Applicant maintained a job and moved with his grandmother for several months and then got his own apartment with a roommate. From 2003 through 2007, the Applicant paid his bills on time. The Applicant attributes his financial indebtedness to his youth, the costs involved in his past relationship with his fiancé, their separation and trying to start over. Since then, the Applicant has worked hard to resolve his delinquent debts and has submitted supporting documentation to substantiate his efforts.

His alleged past due debts are as follows; a delinquent debt in the amount of \$5.00 owed to a creditor that had been placed into collections remained outstanding as of April 23, 2009. Applicant indicates that he was not aware of the debt until his security clearance investigation. Upon learning of the debt, he immediately contacted the creditor and paid it.

A delinquent debt owed to a creditor in the amount of \$761.00 that had been charged off remained outstanding as of April 23, 2009. Applicant explained that he had acquired a credit card for his ex-fiancé with the understanding that she would pay the bill. She failed to do so. The Applicant set up a payment plan with the creditor in July 2009, and is currently making monthly payments of \$25.00 a month. He plans to continue making monthly regular monthly payments until the debt is resolved. (Tr. p. 30 and Applicant's Exhibit B).

A delinquent debt owed to a creditor in the amount of \$36,583.00 for a house that went into foreclosure remained outstanding as of April 23, 2009. In October 2006, the Applicant and his fiancé purchased a home with the intentions of getting married. They made regular monthly payments on the home until the Applicant fell sick on the job, suffering severe headaches that caused him to miss work. His relationship with his fiancé fell apart and she moved out. The Applicant tried to modify the loan, rent rooms and/or sell the house for the amount owed on the loan, but none of these options were successful. From April 2007 through June 2009, the house remained vacant. The Applicant continued to pay for the water, the gardener and the lights in order to get the home sold. The real estate market declined as did the value of the house. The Applicant was forced to enter into an agreement with the bank under the "Short Sale" program and was assured that he would not be responsible for any deficiency on the original loan after the sale was complete. (Tr. p. 45). Applicant submitted a copy of the closing statement on the sale of the home. (Applicant's Exhibits J and I). The house has been sold and the transaction is now complete. (Tr. p. 32 and Applicant's Exhibit C). Government Exhibit 6 states, "closed or paid account, zero balance".

A delinquent debt owed to a creditor in the amount of \$143.00 had been placed into collections and remained outstanding as of April 23, 2009. This was for dental services. The Applicant has since paid the bill off in full. (Tr. p. 35 and Applicant's Exhibit D).

A delinquent debt owed to a creditor in the amount of \$288.00 for an account placed into collections remained outstanding as of April 23, 2009. This was a telephone bill that the Applicant had forgotten about. The Applicant made arrangements with the creditor to settle the debt for 40% of the debt which amounted to \$115.32. On August 15, 2009, the Applicant satisfied the debt and it is no longer outstanding. (Tr. pp. 36-37 and Applicant's Exhibit E).

A delinquent debt owed to a creditor in the amount of \$121.00 for an account placed into collections remained outstanding as of April 23, 2009. Applicant has since paid the debt off in full. (Tr. p. 38 and Applicant's Exhibit F).

Applicant's credit report also showed a recent delinquent debt owed to an apartment complex in the amount of \$245.00 for cleaning services. The Applicant has paid the debt in full. (Applicant's Post-Hearing Exhibit B).

Several letters of recommendation were submitted on the Applicant's behalf. A letter from the Applicant's Chief of Security who hired the Applicant stated that the Applicant is dependable, trustworthy and honest. He gets along with everyone and consistently reports to work on time. He adapts well to all circumstances. When he is given a task he completes it in a timely manner. (Applicant's Exhibit G).

A letter of character reference from the Applicant's pastor who has known the Applicant for five years, considers him to be a positive role model for the youth and an

exceptional leader among his peers. His honesty and integrity is second to none. (Applicant's Post-Hearing Exhibit A).

A letter of recommendation from the Applicant's aunt reflects that she considers him to be an outstanding young man that is well mannered, respectful, always trying to help others (Applicant's 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.

#### Conditions that could raise a security concern:

19.(a) inability or unwillingness to satisfy debts;

19.(c) a history of not meeting financial obligation.

#### Conditions that could mitigate security concerns:

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 and surrounding circumstances;

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, 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. The Applicant has contacted each of the creditors and either paid off the debt, set up a payment plan to do so, or resolved the debt. He understands the importance of paying his bills on time and living within his means. Under the circumstances, he has made a good faith effort to resolve his indebtedness, and there is evidence of financial rehabilitation. He has demonstrated that he can properly handle his financial affairs and that he is fiscally responsible. Under the particular facts of this case, the Applicant must continue to pay off his debts in a timely fashion and maintain a clean credit report or his security clearance will again be in 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* apply. However, Mitigating Conditions 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 above, when viewed under all of the guidelines as a whole, support a whole person assessment of good judgement, trustworthiness, reliability, candor, and 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 mitigates the negative effects of his financial indebtedness and the effects that it can have on his ability to 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 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.
Subpara. 1.f.:	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