



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 09-03356

**Appearances**

For Government: Francisco Mendez, Department Counsel  
For Applicant: *Pro se*

January 27, 2011

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) dated December 18, 2008 and re-certified on January 13, 2010. (Government Exhibit 4.) On April 9, 2010, 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 in writing on June 8, 2010, in which 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 August 5, 2010. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt.

The Government, through Department Counsel, moved to amend allegation 1(r) to reflect: "You were arrested on October 5, 2007, in Delaware and charged with (1) Theft \$1,000 or Greater, (2) Bad Check Greater Than \$1,000, (3) Theft Less Than \$1,000, (4) Bad Check Less Than \$1,000, and (5) Theft Less Than \$1,000. These charges were nolle prosequi." The Applicant was notified of said amendment and failed to respond. Said amendment was so ordered.

The Applicant received the FORM on August 9, 2010, and he submitted no reply. The case was assigned to the undersigned for resolution on September 23, 2010. 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 46 years old, divorced, and has a Masters Degree in Computer Science. He is employed by a defense contractor as a Consultant 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 has been with his current employer since December 2008, and has worked full time since June 2000, with no periods of unemployment. The Applicant has a history of financial indebtedness. In August 2007, the Applicant filed for Chapter 13 bankruptcy protection. (Government Exhibit 6.) The bankruptcy was dismissed in February 2008. (1(a).) Six months later, the Applicant again filed for Chapter 13 bankruptcy protection. (1(b).) (Government Exhibits 7 and 8.) This case was dismissed in December 2008. (Government Exhibit 9.)

The Applicant indicates that he has always been a responsible and hard working citizen. He states that he went through a series of hardships in his life that included a divorce, he started a construction business that did not end up successful, and he experienced serious health issues. He became disorganized with personal and business finances. He has failed to provide any supporting documentation to corroborate these matters.

The SOR sets forth fifteen delinquent debts, two of which are judgments that have been entered against the Applicant. The Applicant admits the debts set forth in allegations 1(c), 1(e), 1(g), 1(i), 1(j), 1(k), 1(o), and 1(p). He denies the debts set forth in allegations 1(d), 1(f), 1(h), 1(l), 1(m), 1(n), and 1(q), and except for 1(m), has provided proof of payment showing that six of the debts have been paid in full. (See Government Exhibit 3, at 9, 10, 11 and 14; and Applicant's Answer to SOR.) Credit reports of the Applicant dated January 15, 2009; April 29, 2009; July 9, 2009; and January 11, 2010; collectively reflect each of the outstanding debts. (Government Exhibits 17, 18, 19, and 20.)

The following debts remain owing and the Applicant plans to research the debts and pay them if he determines that they belong to him. Allegation 1(c), a debt owed to a creditor in the amount of \$600.00; Allegation 1(e), a debt owed to a creditor in the amount of \$632.00; Allegation 1(g), a debt owed to a creditor in the amount of \$556.00; Allegation 1(i), a debt owed to a creditor in the amount of \$723.00; Allegation 1(j), a debt owed to a creditor in the amount of \$1,769.00, Allegation 1(k), is a mortgage debt owed to a creditor in the amount of \$104,000.00. The Applicant explained that he applied for a loan modification on the mortgage and it was subsequently approved for a short sale by the lender. The house has not been sold yet. Presently, the Applicant is in default status on the mortgage and still owes the bank \$225,000.00 on the loan. Allegation 1(m), a judgment entered against the Applicant in the amount of \$7,700.00; Allegation 1(o), a debt owed to a creditor in the amount of \$324.00; and Allegation 1(p), a debt owed to a creditor in the amount of \$101.00.

Allegation 1(r), in October 2007, the Applicant was arrested on two counts of Theft and two counts of passing bad checks. These charges were nolle pros in May 2008. The Applicant explained that he passed two bad checks due to a disorganized accounting system at his former business. (Government Exhibit 3.) Allegations 1(s) and 1(t) in January 2008, the Applicant was arrested for Theft and issuing a bad check. These charges were nolle pros. The Applicant explained that he passed this bad check for equipment for his former business. He received probation before judgment and was ordered to pay court costs and \$650.00 in restitution. He has since satisfied the bad check.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he has engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The Applicant completed a Questionnaire for National Security Positions dated December 18, 2008, that was re-certified by him on January 13, 2010. Question 27(a), asked him if in the last seven years had he filed a petition for bankruptcy. The Applicant answered, "NO." (Government Exhibit 4.) This was a false answer. He failed to disclose that he filed for Chapter 13 bankruptcy in August 2007, and again in August

2008. (Government Exhibits 6, 7, 8 and 9.) The Applicant states that he misinterpreted the question and thought that because he did not follow through with the bankruptcies, he did not have to list them. (Applicant's Answer to SOR.)

Question 27(c) of the same questionnaire asked him if in the last seven years had a lien been placed against his property for failing to pay taxes or other debts. The Applicant answered, "NO." (Government Exhibit 4.) This was a false answer. He failed to disclose a federal tax lien for \$158,649.00 levied against him in 2007. The lien was released in July 2009. (Government Exhibit 13.) The Applicant stated that since he believed the lien was invalid he did not feel he had to list it. (Applicant's Answer to SOR.) However, the lien was not released until six months after he initially signed the security clearance application in December 2008.

Question 27(d) of the same questionnaire asked him if in the last seven years had any judgments against him not been paid. The Applicant answered, "NO." (Government Exhibit 4.) This was a false answer. He failed to disclose unpaid judgments against him in the amounts of \$600.00 as set forth in allegation 1(c); in the amount of \$7,700.00 as set forth in allegation 1(m); and in the amount of \$1,300.00 as set forth in allegation 1(n). (Government Exhibits 10, 11 and 12.) His failure to disclose the judgments and other debts he attributed to an oversight, and that he was aware DoD would do a credit check and find out about the adverse information on their own. (Applicant's Answer to SOR.)

Question 28(a) of the same questionnaire asked him if in the last seven years had he been over 180 days delinquent on any debts; and 28(b), was he currently over 90 days delinquent on any debts. The Applicant answered, "NO." (Government Exhibit 4.) He failed to disclose his delinquent debts set forth in allegations 1(d), 1(e), 1(g), 1(h), 1(i), 1(j), 1(l) and 1(o) of the SOR. His failure to list his debts he attributes to an oversight, and that he was aware that DoD would do a credit check and find out about the adverse information on their own. (Applicant's Answer to SOR.)

Question 23(a) of the same questionnaire asked him if he had ever been charged with or convicted of a felony offense; 23(b), had he ever been charged with or convicted of a firearms or explosives offense; 23(c), were there currently any charges pending against him for any criminal offense; 23(e), in the last seven years, had he been subject to court martial or other disciplinary proceedings under the Uniform Code of Military Justice; and 23(f), in the last seven years, had he been arrested for, charged with, or convicted of any offenses not listed in response to a, b, c, d or e above. The Applicant answered, "NO" to each question. The Applicant failed to disclose his arrest and charge for Theft in October 2007, his arrest and charge for Theft for two occasions in January 2008, his arrest and charge with Forgery in May 2007, his arrest and charge with Elec License in June 2007, and his arrest for Receiving Stolen Property in August 2003. (Government Exhibits 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31.) The Applicant explained that he did not list his arrests because he was under the impression from his attorney that he did not need to list the information since all of the arrests

resulted in nolle pros. He has failed to provide any information from his attorney regarding whether he received this advice. (Applicant's Answer to SOR.)

The Applicant contends that he did not deliberately falsify any information on his security clearance application, and apologizes for oversights and/or misinterpretations on his part. (Applicant's Answer to SOR.) However, I do not find the Applicant to be honest, forthright or credible. The significant amount of material information that the Applicant failed to disclose on his security clearance application reveals that it was done deliberately. Applicant's failure to disclose his bankruptcies, his \$158,649.00 tax lien, judgments and his delinquent debts, except for his late mortgage, is inexcusable.

The Applicant intentionally sought to conceal his adverse financial history and his criminal record from the Government on his security clearance application. This conduct demonstrates dishonesty, unreliability and untrustworthiness. Under the particular facts of this case, his poor personal conduct is considered a significant security risk, which prohibits a favorable determination in this case.

Paragraph 3 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct.

The Applicant has been arrested on multiple occasions. In May 2007, the Applicant was arrested on 18 counts of Forgery. The Applicant indicates that these Forgery charges occurred during a period of time when he had a construction business and was financially disorganized. (Applicant's Answer to SOR.) In September 2007, he failed to appear for his arraignment. In May 2008, he received probation before judgment for a year on 2 counts of Forgery in the 3<sup>rd</sup> degree, which is a Class A misdemeanor in his state. The matter will not be expunged from Applicant's criminal record for five years following his release from probation sometime in May 2014.

The Applicant was arrested in June 2007, for failing to have a certified electrician inspect a project related to his former construction business. (Government Exhibit 3.) The Applicant pled guilty and was fined. In August 2003, the Applicant was arrested and charged with Receiving Stolen Property. The Applicant stated that this charge related to a license plate on his vehicle that was swapped without his knowledge.

In addition, by deliberately attempting to conceal his financial history and criminal record on his security clearance application, the Applicant violated Title 18, United States Code, Section 1001, a felony.

A letter of recommendation from the Chief information Officer at his company indicates that the Applicant is a great asset to the Navy mission. His enthusiasm, technical knowledge, communication skills and professional demeanor are specifically noted. The Applicant is said to be a top performing information technology professional. He is considered to be reliable and dedicated, with an ability to resolve and overcome technical problems. (See attachment to Applicant's Answer to SOR )

## 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;

19.(d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust.

#### Condition that could mitigate security concerns:

None.

### Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

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

16. (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or

status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Conditions that could mitigate security concerns:

None.

#### Guideline J (Criminal Conduct)

30. *The Concern.* Criminal activity creates a doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Conditions that could raise a security concern:

31.(a) a single serious crime or multiple offenses;

31.(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

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 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, criminal conduct and personal conduct, 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), has engaged in criminal conduct (Guideline J), and has deliberately falsified his security clearance application (Guideline E). 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.

In regard to the Applicant's finances, out of fifteen delinquent creditors, he has paid off six of them. He is in the process of researching the other debts to determine whether they are his. He engaged in illegal financial practices with his construction business. Since closing his construction business he states that he has started to clean up his credit issues. Presently, however, he remains excessively indebted to a number of creditors, and has not even determined whether the debts are his, much less started paying them. Much more work is necessary to completely resolve his financial problems or otherwise show that he is now fiscally responsible and properly handling his financial affairs. 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 under this guideline.

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*, 19.(c) *a history of not meeting financial obligations*, 19.(d) *deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust* apply. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline F (Financial Considerations.)

Turning to the Applicant's history of Criminal Conduct. He has been arrested on numerous occasions and has committed numerous acts of Forgery, as recently as 2008, just two years ago, and he remains on probation until May 2014. His record speaks for itself. Under Guideline J, Criminal Conduct, Disqualifying Conditions 31.(a) *a single serious crime or multiple lesser offenses*, and 31.(c) *allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted* apply. None of the mitigating conditions are applicable. Consequently, I find against the Applicant under Guideline J (Criminal Conduct.)

Furthermore, I find that the Applicant intentionally falsified his security clearance application by failing to list his financial and criminal history. There is no excuse for the number of errors in the questionnaire, other than can be attributed to his deliberate attempt to conceal the information. Under Guideline E, Personal Conduct, Disqualifying Condition, 16.(a) *deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary*

*responsibilities* applies. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline E (Personal Conduct.)

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 poor judgement, untrustworthiness, unreliability, lack of candor, an unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard classified information.

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 Paragraphs 1, 2, and 3 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.: For the Applicant.
- Subpara. 1.e.: Against the Applicant.
- Subpara. 1.f.: For the Applicant.
- Subpara. 1.g.: Against the Applicant.
- Subpara. 1.h.: For the Applicant.
- Subpara. 1.i.: Against the Applicant.
- Subpara. 1.j.: Against the Applicant.
- Subpara. 1.k.: Against the Applicant.
- Subpara. 1.l.: For the Applicant.
- Subpara. 1.m.: Against the Applicant.
- Subpara. 1.n.: For the Applicant.
- Subpara. 1.o.: Against the Applicant.
- Subpara. 1.p.: Against the Applicant.
- Subpara. 1.q.: For the Applicant.
- Subpara. 1.r.: Against the Applicant.
- Subpara. 1.s.: Against the Applicant.
- Subpara. 1.t.: Against the Applicant.

Paragraph 2: Against the Applicant.  
Subpara. 2.a.: Against the Applicant.  
Subpara. 2.b.: Against the Applicant.  
Subpara. 2.c.: Against the Applicant.  
Subpara. 2.d.: Against the Applicant.  
Subpara. 2.e.: Against the Applicant.

Paragraph 3: Against the Applicant.  
Subpara. 3.a.: Against the Applicant.  
Subpara. 3.b.: Against the Applicant.  
Subpara. 3.c.: Against the Applicant.  
Subpara. 3.d.: 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