



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 09-05831  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

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

October 15, 2010

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) dated March 31, 2009. (Government Exhibit 1.) On December 8, 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 January 4, 2010, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on February 18, 2010 and the hearing was scheduled for March 30, 2010. The matter was transferred to another Administrative Judge on March 1, 2010, and the hearing was convened on April 2, 2010. The Applicant requested that the matter be continued to allow him the opportunity to obtain additional

supporting documentation. Department Counsel also noted that given the apparent language barrier, the matter could be transferred to a bilingual Department Counsel and bilingual Administrative Judge for ease of handling. (Tr. dated April 2, 2010, pp. 14-15.) The case was transferred back to the undersigned Administrative Judge on April 6, 2010. A notice of hearing was issued on June 2, 2010, scheduling the hearing for July 27, 2010. The Government presented seven exhibits, referred to Government Exhibits 1 to 7, which were admitted without objection. The Applicant presented six exhibits, referred to as Applicant's Exhibits A and F, which were admitted without objection. The Applicant also testified on his own behalf. The record remained open for an additional 30 days to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted eight Post-Hearing Exhibits, consisting of sixty pages, referred to as Applicant's Post-Hearing Exhibits 1 through 8, which were admitted without objection. The official transcript (Tr.) was received on August 5, 2010.<sup>1</sup> 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 43 years old, and has an eighth grade education. He is employed by a defense contractor as a Mechanical Assembler 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 came to the United States from Mexico in 1987. He worked in the food service business for about five years, and was a part-time janitor before he started working in the construction business where he spent twenty-five years, from about 1993 to 2008. He married in 1994. His wife and child are United States citizens. He became a naturalized United States citizen in 2007. (Tr. p. 84.) The Applicant attributes his financial indebtedness to five separate periods of unemployment due to the downturn in the economy, that devastated the construction industry. The Applicant was unemployed for about a year and a half before he began working for his present employer in March 2009. He has never applied for or held a security clearance before.

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<sup>1</sup> All references to the transcript hereinafter are from the transcript dated July 27, 2010.

The Applicant admits each of the seven delinquent debts set forth in the SOR under this guideline that total over \$200,000. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated April 10, 2009, September 4, 2009 and February 9, 2010, collectively reflect each of the delinquent debts set forth in the SOR. (Government Exhibits 3, 4 and 5.)

In June 2002, the Applicant filed for Chapter 7 bankruptcy. (Applicant's Exhibit A.) He explained that he had injured his foot, was placed on disability for six months, and did not have enough money to cover his bills. (Tr. pp. 49-50.) His debts were discharged in September 2002. At the same time, his attorney advised him to file for Chapter 13 bankruptcy to protect his house from foreclosure, and to allow him to be able to transfer title on his house to a purchaser. He did so, and the title to his house was transferred when it was purchased. (Applicant's Exhibit A and Tr. pp. 51-52.)

The Applicant was indebted to a creditor in the amount of \$133.00, a creditor in the amount of \$540.00, a creditor in the amount of \$2,931.00, a creditor in the amount of \$769.00, a creditor in the amount of \$49,762.00, a creditor in the amount of \$236,336.00 and a creditor in the amount of \$206.00. The Applicant made various attempts to contact his creditors and has had difficulties reaching them and/or determining who to pay.

In regard to two of the larger debts for home mortgages, the Applicant explained that he was a victim of a fraud scheme that he reported to the district attorney. (Applicant's Exhibit B.) Sometime in 2007, a neighbor, who was a real estate agent, asked him if he wanted to join an investment group in order to qualify for a loan to buy a house. He agreed, and signed some loan documents. When the Applicant was trying to purchase a car, he learned that he had derogatory information on his credit report that said he owed property that he knew nothing about. He later learned that two loans had been taken out in his name and had been used to purchase property that he knew nothing about. The Applicant never received the money from the loans or the property. He contacted the district attorney and reported the fraud. (Tr. pp. 59-65.) The Applicant testified that his neighbor, the real estate agent in question, is now in jail. (Tr. p. 58).

Applicant contacted a credit consumer counselor and an attorney regarding his delinquent indebtedness. His attorney advised him that given his circumstances he should wait until August 2010, and then file for bankruptcy under Chapter 7. On August 31, 2010, the Applicant filed for Chapter 7 bankruptcy to discharge his debts. (Applicant's Post-Hearing Exhibits 4, 5, 6 and 7.) Applicant's Amended Schedule F, reflecting creditors holding unsecured non-priority claims, lists each of the debts set forth in the SOR, except a debt owed to a creditor in the amount of \$133.00, a debt owed to a creditor in the amount of \$206.00, and a debt owed to a creditor in the amount of 769.00, each of which have been resolved.

Applicant's personal financial statement dated August 17, 2010, indicates that after paying his regular monthly expenses he has sufficient discretionary money to live on. (Applicant's Post-Hearing Exhibit 2.)

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant's mother and father, and three sisters are residents and citizens of Mexico. He visits them in Mexico two to five times a year. They live about fifteen minutes from the border of the state where the Applicant resides. He also has one brother and one step-brother who are residents and citizens of Mexico. He also has one sister and one brother who reside in the United States, and are citizens of Mexico. His mother-in-law is now a citizen of the United States and lives in the United States. The Applicant credibly testified that if any of his family in Mexico were kidnaped in exchange for him disclosing classified information, he would never disclose it. He would immediately report the matter to his company and the security authorities in the United States. (Tr. pp. 71-72.) The Applicant has no assets of any kind in Mexico. (Tr. p. 66).

I have taken official notice of the following facts concerning the country of Mexico. The United States relationship with Mexico is as important and complex as with any country in the world. The United States and Mexico have a history of cooperation. A stable, democratic, and economically prosperous Mexico is fundamental to United States interests. The United States and Mexico are partners in NAFTA, and enjoy a broad and expanding trade relationship. In March 2005, the United States, Mexico and Canada formed the Security and Prosperity Partnership, which contemplates trilateral and bilateral initiatives to develop new avenues of cooperation that will enhance North America's security, competitiveness, and economic resilience. Mexico has sought to maintain its interests abroad and projects its influence largely through moral persuasion and has championed the principles of nonintervention and self-determination. In its efforts to revitalize its economy and open up to international competition, Mexico has sought closer relations with the United States, Western Europe and the Pacific basin.

Crime, including illegal drug trade in Mexico continues to occur at a high rate, and can often be violent. In some instances, Americans have become victims of harassment, mistreatment and extortion by Mexican law enforcement and other officials. There have been a significant number of rapes, robberies, assaults and credit card theft. American tourists are cautioned and should carefully assess the potential risks in Mexico.

Letters of recommendation submitted on behalf of the Applicant from his Senior Pastor, coworkers and friends indicate that he is a hard worker on the job, has good work ethics, is responsible and trustworthy, is always willing to learn new things, and gets along well with others. He enjoys spending time with his family and attends church regularly. He also exhibits moral, emotional and spiritual growth. (Applicant's Exhibit F.)

## 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 conditions 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;

20.(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

### Foreign Influence

6. *The Concern.* Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not

limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Condition that could raise a security concern:

7.(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

Condition that could mitigate security concerns:

8.(a) The nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.

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 and foreign contacts 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) and has foreign contacts (Guideline B). 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.

With respect to his finances, most of the Applicant’s delinquent debt was caused by periods of unemployment from the downturn in the economy that paralyzed the construction industry. He was forced to file bankruptcy in the past due to periods of unemployment. More recently, he was a victim of a fraud scheme that created a lot of

his debt that he did not know about. Since 2009, he has been working to resolve his indebtedness. He has paid off several of the smaller debts. He has hired an attorney and filed Chapter 7 Bankruptcy to discharge his debts. Other than the two creditors he paid, each of the creditors listed in the SOR are included in the Bankruptcy and are expected to be discharged.

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 conditions 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* and 20.(e) *the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue* are applicable.

The Applicant has indeed made a good faith effort to repay his overdue creditors or otherwise resolve his debts. He is now employed, able to pay his bills, and living within his means. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

Under Guideline B, the Applicant's foreign family members in Mexico, namely his mother, father, three sisters, one brother and one step-brother, do not pose a security risk. He also has a sister and brother who are Mexican citizens who reside in the United States. His contact with his relatives in Mexico is casual at best. His immediate family, that include his wife and child, are citizens of the United States and reside with the Applicant. The Applicant has made his permanent home in the United States and is grateful for the opportunities he has in this country. Under no circumstances will he disclose unauthorized classified information. Disqualifying Condition 7.(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion* applies. However, Mitigating Condition 8.(a) *the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.* is more applicable here. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

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 Paragraphs 1 and 2 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.

Paragraph 2: For the Applicant.

- Subpara. 2.a.: For the Applicant.
- Subpara. 2.b.: For the Applicant.
- Subpara. 2.c.: For the Applicant.
- Subpara. 2.d.: For the Applicant.
- Subpara. 2.e.: For the Applicant.
- Subpara. 2.f.: 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

