



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. 09-06594

**Appearances**

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

March 2, 2011

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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 May 13, 2009. (Government Exhibits 1 and 2.) On May 7, 2010, 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 May 26, 2010, and he requested a hearing before a DOHA Administrative Judge. This case was originally assigned to another Administrative Judge on July 2, 2010. A notice of hearing was issued on July 27, 2010, and the matter was scheduled for August 18, 2010. On that date, Department Counsel requested a continuance that was granted. The matter was transferred and reassigned to the undersigned on November 4, 2010. A notice of hearing was issued on January 3, 2011, and the hearing was scheduled for January 19, 2011. At the hearing the Government presented ten exhibits, referred to as Government Exhibits 1

through 10. The Applicant presented no exhibits, but testified on his own behalf. The record remained open until close of business on February 18, 2011, to allow the Applicant the opportunity to submit supporting documentation. The Applicant submitted nine Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A through I. The official transcript (Tr.) was received on January 25, 2011. 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 34 years old and is a high school graduate, with some technical school and some college. He is employed with a defense contractor as a Security Guard and is seeking to obtain a security clearance in connection with this 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 joined the United States Marine Corps at seventeen in order to serve his country. He served honorably on active duty, and at times in combat for eight and a half years, from August 1995 to September 2003. His military awards include the Presidential Unit Citation, a Meritorious Unit Commendation, a Good Conduct Medal, the National Defense Service Medal with one bronze star, the Armed Forces Expeditionary Medal, the Iraq Campaign Medal with two bronze campaign stars, the Global War on Terrorism Service Medal, the Humanitarian Service Medal, the Sea Service Deployment Ribbon with two bronze stars, and a rifle sharpshooter badge. (Applicant's Post-Hearing Exhibits G and H.)

In 2003, instead of accepting orders to recruiting, he fought to go to Iraq because he thought it was the honorable thing to do. (Tr. p. 24.) While deployed, the Applicant's wife had a general power of attorney. At the time, the Applicant was receiving combat pay, imminent danger pay, and separation pay that was tax free. His wife received his paychecks and spent them, instead of paying the bills.

Upon his return from Iraq, the Applicant learned among other things that his wife had not paid their bills, and had spent money on a boat cruise with her mother. The Applicant was denied re-enlistment for turning down recruiting orders and was separated from the military. His wife and family disowned him, and his financial problems began. He incurred the cost of a divorce, the value of giving half of his possessions to his former wife, and for some time he paid for groceries and other miscellaneous bills for his wife, her mother and her uncle. Following the divorce, he had

tax obligations and credit cards bills that his ex-wife had generated that he paid. (Tr. p. 25.)

The Applicant started working for his current employer in November 2003. He has been Employee of the Month in March 2004, March 2005 and May 2009. (Applicant's Post-Hearing Exhibit B.)

In July 2008, while at work, the Applicant experienced what he defined as a "flashback". He was subsequently screened for PTSD and was diagnosed with the condition. He is currently being prescribed ten different medications for his condition and sees his physician once a week. (Tr. p. 27.) Although the Applicant had realized some mood changes, and that he had become socially withdrawn and agitated, he did not realize the extent of his problem until recently. He is now under medical care for his condition. He also suffers from a herniated disk and arthritis. He has been told that he is eligible to receive VA compensation and a disability rating. With the money he receives, he is planning to immediately resolve all of his delinquent debts. (Tr. p. 70.)

Credit Reports of the Applicant dated May 29, 2009; December 30, 2009; March 4, 2010; and June 29, 2010, reflect that the Applicant was indebted to each of the creditors set forth in the SOR, in an amount totaling approximately \$16,000 in bad debt. (Government Exhibits 5, 6, 7 and 8.)

The following debts became delinquent. The Applicant has contacted each of his creditors and has either paid off the debt, is disputing the debt, is in the process of having it removed from his credit report, or has set up regular monthly payments that he is following to resolve the debt. 1(a) A debt to a creditor in the amount of \$3,995.00 is under dispute. The Applicant contends that he has never been treated by the facility. (Tr. p. 30.) He has however, set up a payment plan of \$200.00 monthly that he will pay according to the Service Members Relief Act. (Applicant's Post-Hearing Exhibit B.) 1(b) A debt to a creditor in the amount of \$215.00 was researched and the creditor told the Applicant that he is no longer responsible for the debt due to the statute of limitations. (Applicant's Post-Hearing Exhibit B.) 1(c) A debt owed to a creditor in the amount of \$129.00 has been paid in full. (Applicant's Post-Hearing Exhibit F and Tr. p. 31.) 1(d) A debt owed to a creditor in the amount of \$458.00 had been paid. Applicant's credit report dated January 14, 2011, shows "paid account/zero balance." 1(e) A debt owed to a creditor in the amount of \$831.00 is unknown as the Applicant is unaware of the debt and it is not reflected on his most recent credit report. (Applicant's Post-Hearing Exhibit B.) 1(f) A debt owed to a creditor in the amount of \$517.00 has been paid in full. (Applicant's Post-Hearing Exhibit B.) The Applicant contends that the debts set out in the SOR under allegations 1(e) and 1(f) are the same debt. (Applicant's Post-Hearing Exhibit B.)

1(g) A debt owed to a creditor in the amount of \$766.00 has been paid in full. (Applicant's Exhibit B.) 1(h) A debt owed to a creditor in the amount of \$753.00 is under dispute and the creditor indicates that there is no balance due. (Applicant's Post-Hearing Exhibit D.) 1(i) and 1(j) Debts owed to a creditor in the amount of \$359.00 are

the same account and the Applicant has paid the debt in full. (Applicant's Post-Hearing Exhibit B and Tr. pp. 33-34.) 1(k) A debt owed to a creditor in the amount of \$ 1,383.00 will be paid when the Applicant receives his VA compensation. (Applicant's Post-Hearing Exhibit B.) 1(l) A debt owed to a creditor in the amount of \$121.00 has been paid in full. (Applicant's Post-Hearing Exhibit B.) 1(m) A debt owed to a creditor in the amount of \$210.00 will be paid when he receives his VA compensation. (Applicant's Post-Hearing Exhibit B.) The Applicant contends that this is the same debt set forth in 1(a) and he is disputing the debt. (Tr. p. 36.) 1(n) A debt owed to a creditor in the amount of \$27.00 has been paid. (Applicant's Post-Hearing Exhibit B.) Applicant contends that this debt is the same as allegation 1(d). (Applicant's Post-Hearing Exhibit B.)

1(o) A debt owed to a creditor in the amount of \$202.00 had been paid in full and the Applicant plans to have the entry removed from his credit report. (Applicant's Post-Hearing Exhibit B.) 1(p) A debt owed to a creditor in the amount of \$4,323.00 is under dispute. The Applicant does not believe the amount owed. He plans to research his rights under the Service Members Civil Relief Act which prohibits interest rates above six percent on service members loans. He then plans to pay the debt. (Tr. p. 40.) 1(q) A debt owed to a creditor in the amount of \$2,720.00 has been paid in full. (Applicant's Post-Hearing Exhibit B.) 1(r) A debt owed to a creditor in the amount of \$290.00 will be paid when he receives his VA compensation. (Applicant's Post-Hearing Exhibit B.) 1(s) A debt owed to a creditor in the amount of \$90.00 has been paid in full. (Applicant's Post-Hearing Exhibit E.)

The Applicant states that he will continue to pay his creditors to become debt free. He has enrolled in a finance class to avoid making any financial mistakes in the future. (Applicant's Post-Hearing Exhibit B.)

A letter from a city council member dated August 14, 2003, reflects that the Applicant assisted a city employee in an vehicle accident and was commended for his good Samaritan actions. (Applicant's Post-Hearing Exhibit I)

## **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; and,

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

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 circumstances;

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.

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 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 behavior 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 or her 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 evidence shows that circumstances largely beyond the Applicant’s control, namely, his military deployments, his ex-wife who spent his money lavishly instead of paying the bills, his divorce, and his PTSD diagnosis and its symptoms, have all

contributed to his financial difficulties. Recently, the Applicant has sought out medical treatment, and is awaiting VA compensation and a disability rating. In regard to his financial situation, he has been working hard to resolve his indebtedness. He has contacted each of his creditors and has either disputed the debt, paid off the debt, is making regular monthly payments toward paying off the debt, or is in the process of having the creditor removed from his credit report. He plans to pay off all of his remaining debts when he receives his VA compensation. He has enrolled in a finance class to prevent any future financial problems. Under the circumstances he has done as much as is humanly possible to resolve his financial problems.

Under the particular circumstance of this case, the Applicant has made a good faith effort to resolve his past due indebtedness. Prior to his military deployment, he had a great financial record demonstrating that he had always paid his bills on time, before his marriage went awry. The Applicant understands the importance of paying his bills on time and living within his means. He must continue to resolve his remaining delinquent debts and remain fiscally responsible in the future. There is sufficient evidence of financial rehabilitation. The Applicant has demonstrated that he can properly handle his financial affairs and that he is financially responsible. 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.

Under Guideline F (Financial Considerations), Disqualifying Conditions 19.(a) *inability or unwillingness to satisfy debts*; and 19.(c) *a history of not meeting financial obligation* 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 circumstances*, 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. The Applicant has served his country in and out of combat, and unfortunately was left with a failed marriage, delinquent debt, and a medical condition. Even so, he has demonstrated integrity in all aspects. 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, including the Applicant's favorable work history. They mitigate 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.
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.
Subpara. 1.o.:	For the Applicant.
Subpara. 1.p.:	For the Applicant.
Subpara. 1.q.:	For the Applicant.
Subpara. 1.r.:	For the Applicant.
Subpara. 1.s.:	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



