



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. 09-06683

**Appearances**

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

December 30, 2010

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on April 23, 2009. (Government Exhibit 1.) On June 18, 2010, 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 for SORs issued after September 1, 2006.

The Applicant responded to the SOR on June 25, 2010, and he requested a hearing before a DOHA Administrative Judge. The case was assigned to this Administrative Judge on August 23, 2010. A notice of hearing was issued on August 27, 2010, scheduling the hearing for October 6, 2010. The Government presented seven exhibits, referred to as Government Exhibits 1 to 7, which were admitted without

objection. The Applicant presented twelve exhibits, referred to as Applicant's Exhibits A to L, which were admitted without objection. The Applicant also testified on his own behalf. The record remained open until close of business on December 10, 2009, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted one Post-Hearing Exhibit, consisting of 22 pages, referred to as Applicant's Post-Hearing Exhibit A which was admitted without objection. The official transcript (Tr.) was received on October 20, 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 34 years old, and married with three children. He has a high school diploma and about a year of college. He is employed by a defense contractor as a Communications Technician 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 the delinquent debts set forth in the SOR under allegations 1(a), 1(b), 1(c), 1(d), 1(e), 1(f), 1(g), 1(h), 1(i), 1(o), 1(p), 1(q), and 1(r). He denies allegations 1(j), 1(k), 1(l), 1(m), and 1(n). (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated May 6, 2009; February 4, 2009; May 10, 2010; and July 20, 2010, collectively reflect each of the delinquent debts set forth in the SOR. (Government Exhibits 3, 4, 5 and 6.) The Applicant's delinquent debts set forth in the SOR total in excess of approximately \$50,000.00.

The Applicant's financial problems started when he was laid off from his job in May 2007, as a result of the downturn in the economy that hit the automotive industry. Before he was laid off, he had excellent credit and always paid his bills on time. He had been earning about \$70,000 a year in salary including benefits and bonuses. At the time of his lay off, he was in the process of building a new home, and had charged up credit cards for household good and appliances. From May 2007, to March 2008, the Applicant was unemployed and did not have the money to pay his bills. To keep his creditors informed of his financial situation, he wrote and mailed certified letters to each of his creditors telling them that he had every intention of paying his bills, but that he

was out of work and would like to work out a payment plan. (Applicant's Exhibit A.) Only four or five of the creditors responded to the Applicant. He set up payment plans with a couple of them. The Applicant began working for his current employer in March 2009.

With his current job, the Applicant is living within his means and is current with all of his regular monthly expenses. He now earns \$20,000 to \$25,000 less than he had been earning with his previous employer. He is paying the mortgage, buying groceries and managing a few small bills. The Applicant is commuting about 160 miles a day to and from work in order to work full time. (Tr. p. 54-55.)

Letters of recommendation from his supervisor, his supervisor's boss, a manager, a coworker, and a site representative attest to the Applicant's hard working nature. He is said to frequently go beyond his duties to insure the job is done successfully. He is intelligent, thoughtful, honest, trustworthy, loyal and well mannered. He consistently shows great personal integrity. He understands the responsibilities that come with holding a security clearance. He is highly recommended for a position of trust. (Applicant's Exhibit B.)

The Applicant contacted an attorney and filed for Chapter 7 Bankruptcy on November 22, 2010, to discharge his delinquent debts. Each of the delinquent debts set forth in the SOR have been included in the Applicant's Chapter 7 Bankruptcy petition. (Applicant's Post-Hearing Exhibit A.) He has also taken credit counseling classes.

## **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(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 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.

With respect to his financial problems, the Applicant had excellent credit until he was laid off from his job in May 2007, as a result of the bad economy. Being unemployed for ten months caused him to fall behind on his bills. Thus, circumstances beyond his control caused his financial delinquencies. He has now gained employment and is working full time. He has contacted his creditors to inform them of his situation. He has hired an attorney and recently filed for Chapter 7 Bankruptcy to discharge his delinquent debts. Each of the creditors in the SOR have been listed in the bankruptcy and will be discharged soon. The Applicant has acted prudently and responsibly since losing his job in an effort to resolve his delinquent debt history. Under the circumstances, the Applicant had done everything humanly possible to resolve his debts.

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 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. 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 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 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.  
Subpara. 1.o.: For the Applicant.  
Subpara. 1.p.: For the Applicant.  
Subpara. 1.q.: For the Applicant.  
Subpara. 1.r.: 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