



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



In the matter of:

-----  
-----

Applicant for Security Clearance

)  
)  
)  
)  
)  
)

ISCR Case No. 09-06964

**Appearances**

For Government: Paul M. DeLaney, 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 December 18, 2008. (Government Exhibit 5.) On July 28, 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 in writing on September 1, 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 September 28, 2010. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant

received the FORM on October 8, 2010, and he submitted no reply. The case was assigned to the undersigned for resolution on December 1, 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 53 years old. He is employed by a defense contractor as a Radar Technician/ Station 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 each of the delinquent debts set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated July 14, 2010; October 1, 2009; and January 3, 2009, collectively reflect each of the delinquent debts set forth in the SOR. (Government Exhibits 8, 9 and 10.)

The Applicant's delinquent debts total in excess of approximately \$25,000. Allegation 1(a), a delinquent state tax debt in the amount of \$1,473.00 remains owing. Allegation 1(b), a delinquent medical bill sent to collections in the amount of \$1,968.00 is being paid through payroll deductions. Allegation 19(c), a delinquent medical bill in the amount of \$848.00 remains owing. Allegation 1(d), a delinquent medical bill in the amount of \$400.00 remains owing. Allegation 1(e), a delinquent medical bill in the amount of \$108.00 remains owing. Allegation 1(f), a delinquent medical bill in the amount of \$2,576.00 remains owing. Allegation 1(g), a delinquent medical bill in the amount of \$275.00 remains owing. Allegation 1(h), a delinquent bill to a communications company in the amount of \$113.00 remains owing. Allegation 1(i), a delinquent child support account in the amount of \$19,031.00 remains owing. Allegation 1(j), a delinquent medical bill in the amount of \$73.00 remains owing. Allegation 1(k), a delinquent medical bill in the amount of \$307.00 remains owing.

Applicant's answer to the SOR, and the attachments indicate that he has made several monthly payments to each of his creditors in amounts between \$50.00 and \$100.00 on average. The most recent payments reflect the date of February 2010. There is no evidence of any further payments in the record. Applicant's personal

financial statement dated April 10, 2010, reflects that after paying his monthly expenses and several of his delinquent debts, he has a net remainder at the end of the month of \$860.00. (Government Exhibit 7). It is not clear from the record what the Applicant is doing with his discretionary monies.

The Applicant failed to explain how or why he got into debt. He stated that he went through a divorce in the past and did not have the money to pay his debts. Following his divorce, in October 2005, he filed for Chapter 7 Bankruptcy protection and discharged his delinquent debt in July 2006. (Government Exhibit 10.) He contends that since obtaining full time employment after eight years of temporary jobs and unemployment, he is now able to resolve his debts.

The Applicant failed to file annual federal income tax returns for tax years 1997, 1999, 2001 through 2003 and 2005 through 2007. In a statement to a Department of Defense (DoD) investigator in February 2009, the Applicant stated that he failed to file his Federal income tax returns because he was "was not concerned about it" and "did not want to." (Government Exhibit 6). At that time, the Internal Revenue Service claimed that he owed \$250,000 in back taxes. The Applicant claims that he has now filed his federal income tax returns for years 2000 to the present. Her has provided no documentary evidence to prove such filings or that he has paid any of his back taxes. In April 2010, the Applicant stated that he had still not filed his federal income tax returns for years 1997-1999. He stated that his tax preparer is handling the matters. (Government Exhibit 5.)

The Applicant has also failed to pay his child support obligations. He currently owes child support to a State in the amount of \$19,031.00. The Applicant states that his payroll account is being garnished on a monthly basis in the amount of \$446.00 toward the principle, and \$446.00 toward arrears. (Government Exhibit 5.)

## **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:

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 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 issues, the Applicant has not produced sufficient evidence to warrant the application of any of the applicable mitigating conditions under this guideline. Although he has made several payments to each creditor, the most recent payments reflecting a date of February 2010, the payments are mitigating, but not controlling. From the evidence submitted, he remains excessively indebted. He failed to respond to the FORM with any additional evidence in mitigation. Although he started working toward resolving his indebtedness, his financial problems are ongoing and have not been resolved. Furthermore, he has not produced evidence showing that they are a product of either circumstances or conditions beyond his control. Although he plans on paying all of his debts, he has been unable to do so, and they, for the most part, all remain outstanding. A promise to take remedial measures in the future is not evidence of reform and rehabilitation. Additionally, there is no evidence in the record to demonstrate that he can even afford to make his regular monthly payments in addition to making payments on his delinquent debts. He has not shown that he has acted prudently or responsibly over a course of time in managing his financial affairs.

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*, and 19(c) *a history of not meeting financial obligations* apply. None of the mitigating conditions are applicable. The Applicant has not made a good faith effort to repay his overdue creditors or otherwise resolve his debts. Accordingly, I find against 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 poor judgement, untrustworthiness, unreliability, a 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 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: Against the Applicant.
- Subpara. 1.a.: Against the Applicant.
- Subpara. 1.b.: Against the Applicant.
- Subpara. 1.c.: Against the Applicant.
- Subpara. 1.d.: Against the Applicant.
- Subpara. 1.e.: Against the Applicant.
- Subpara. 1.f.: Against the Applicant.
- Subpara. 1.g.: Against the Applicant.
- Subpara. 1.h.: Against the Applicant.
- Subpara. 1.i.: Against the Applicant.
- Subpara. 1.j.: Against the Applicant.
- Subpara. 1.k.: Against the Applicant.
- Subpara. 1.l.: Against the Applicant.
- Subpara. 1.m.: 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